SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 118

JAMES A. DOMBROWSKI, ET AL.,
PETITIONERS,

vs.

JAMES EASTLAND, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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[fol. A]

Joint Appendix—Filed July 22, 1964

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 18435, 18544

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE EDUCATIONAL FUND, INC., Appellants,

against

COLONEL THOMAS D. BURBANK, individually and as Commanding Officer of the Division of Louisiana State Police, RUSSELL R. WILLIE, individually and as Major of the Louisiana State Police Department, JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, SENATOR JAMES EASTLAND, individually and as Chairman of the Internal Security Subcommittee of the Judiciary Committee of the United States Senate, J. G. SOURWINE, individually and as Committee counsel for the Internal Security Subcommittee of the Judiciary Committee of the United States Senate, the CITY OF NEW ORLEANS and ALLSTATE INSURANCE CO., Appellees.

[File endorsement omitted]

[fol. 1]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2678-63

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE EDUCATIONAL FUND, INC., Plaintiffs,

vs.

COLONEL THOMAS D. BURBANK, *et al.*

COMPLAINT—Filed October 31, 1963

The plaintiffs for their verified complaint allege:

Parties

1. James A. Dombrowski is a citizen of the State of Louisiana and of the United States.

2. Southern Conference Educational Fund, Inc. is a corporation organized under the laws of the State of Tennessee maintaining an office for business purposes in the State of Louisiana, whose purpose and function is to secure to Negro citizens the rights guaranteed them under the United States Constitution and to end all forms of segregation in the Southern section of the United States.

3. Defendant Thomas D. Burbank is the Commanding Officer of the Division of State Police for the State of Louisiana. He is sued individually and in his capacity as Commanding Officer of the Louisiana State Police. He is a citizen of the State of Louisiana.

4. Defendant Russell R. Willie is a Major in the Louisiana State Police Department. He is sued individually and in his capacity as Major of Louisiana State Police. He is a citizen of the State of Louisiana.

5. James H. Pfister is a Louisiana State representative and Chairman of the Joint Legislative Committee on [fol. 2] Un-American Activities of the Louisiana Legislature. He is sued individually and in his capacity as Chairman of said Committee. He is a citizen of the State of Louisiana.

6. Senator James Eastland, United States Senator from the State of Mississippi, is Chairman of the Internal Security Subcommittee of the Judiciary Committee of the United States Senate. He is sued individually and in his capacity as Chairman of said Committee. He is a citizen of the State of Mississippi, and a resident of the District of Columbia.

7. J. G. Sourwine is Committee counsel for the Internal Security Sub-Committee of the Judiciary Committee of the United States Senate. He is sued individually and in his capacity as Committee counsel. He is a resident of the District of Columbia.

8. The City of New Orleans is a Municipal Corporation in the State of Louisiana.

9. Allstate Insurance Company is an insurance corporation organized under the laws of a state other than the State of Louisiana, but doing business in the State of Louisiana, and the District of Columbia.

Jurisdiction of the Court

10. The jurisdiction of the Court over this Complaint arises under Title 28 U. S. C. 1331(a), 1343(3), (4), 2201, 2202, and 2281; Title 42 U. S. C. 1981, 1983, 1985, and under the Constitution of the United States, and in particular the First, Fourth, Fifth and Fourteenth Amendments thereto.

11. The amount in controversy, exclusive of interest and costs exceeds the sum or value of $10,000.00.

[fol. 3] The Cause of Action

12. The defendants, Colonel Thomas D. Burbank, Major Russell R. Willie, James H. Pfister, James Eastland and J. G. Sourwine, and the City of New Orleans, through certain below mentioned persons employed by the City of New Orleans as police officers, acting in their official capacities in behalf of the City of New Orleans, entered into a plan, agreement and conspiracy wilfully and with intent with other persons to the plaintiffs now unknown under the color of state law and statutes, to deprive the plaintiffs of the rights, privileges and immunities granted to them as citizens of the United States by the laws and Constitution of the United States, and in particular, the First, Fourth and Fourteenth Amendments thereof.

13. Pursuant to this conspiracy on October 4, 1963, certain police officers of the Police Department of defendant, the City of New Orleans, namely, Major P. J. Trosclair, Captain Henry M. Morris, Sgt. Horace J. Austin, Jr., Sgt. John A. Sarran, Patrolman Kenneth Knapp, Patrolman Bernard Windstein and Patrolman Clinton Lauman, together with certain officers of the Louisiana State Police, Lt. William R. Abadie, Sgt. John F. Short, Patrolman Frank Lee and Eugene Gary, all acting under the direction of the Commanding Officer of the Louisiana State Police Department, and F. B. Alexander, Jr., Staff Director of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, acting under the direction of and in behalf of defendant, James H. Pfister, forcibly entered the business office of the Southern Conference Educational Fund, Inc. at 822 Perdido Street in the City of New Orleans, and proceeded to search and seize a large quantity of objects and articles belonging to said plaintiff, including all of the books and records of the said corporation, as well as all ledgers, receipts, memoranda, vouchers [fol. 4] and other documents, including pamphlets and literature, and many items of personal property belonging to James A. Dombrowski; that after searching the said

place of business for several hours, and ransacking the office and seizing all articles, items and documents available, James A. Dombrowski was placed under arrest and booked with violation of certain state statutes, particularly Louisiana Revised Statutes 14:358 et seq. and 14:390 et seq.

14. Furthermore, officers of the New Orleans Police Department and of the State Police Department, acting pursuant to the said conspiracy and in behalf of and at the direction of the defendants herein named as members of the said conspiracy, proceeded to search the residence of James A. Dombrowski, 715 Governor Nichols Street in the City of New Orleans, and seized many items of personal property from the said residence, and from the vehicle of James A. Dombrowski located nearby.

15. All of the items, articles and documents seized pursuant to all of the above mentioned searches, were forwarded to the office of the Louisiana State Police Headquarters in Baton Rouge, Louisiana, where they were under the custody of the defendant, Thomas D. Burbank, as Commanding Officer of the Division of State Police, and of defendant James H. Pfister in his capacity as Chairman of the above mentioned State Legislative Committee.

16. As a part of the aforementioned plan and conspiracy the defendants obtained certain arrest warrants and search warrants which purported to authorize the above set forth arrests and searches. These warrants were issued on October 2nd, 1962 by Judge Thomas Brahney, Jr., of the Section "D" of the Criminal District Court for the Parish of Orleans. It was part of the plan and conspiracy to obtain these warrants without any legal and lawful cause. [fol. 5] Pursuant to this plan and conspiracy they were issued without any legal cause and justification so that the defendants might seize the books, records, documents and other articles belonging to the plaintiffs. In further pursuance of the conspiracy defendant Willie, acting under color of his position as Major of the Louisiana State Police,

made various allegations in the affidavits upon which the said warrants were issued, which allegations were false and untrue, and wholly without any probable cause.

17. In pursuance of the conspiracy the arresting officers seized at 822 Perdido Street lists of members, contributors and friends of plaintiff corporation, Southern Conference Educational Fund, Inc. The seizure of said lists was for the purpose of learning the identity of said members, contributors and friends, for the purpose of harassment and intimidation and to deter these people, the plaintiff and the plaintiff corporation from exercising their constitutional rights.

18. No affidavit or other criminal proceedings were ever initiated against plaintiff Dombrowski, but on October 25, 1963, upon motion of plaintiff for a preliminary hearing Judge J. Bernard Cocke, of Section "E" of the Criminal District Court for the Parish of Orleans, after hearing evidence, immediately and summarily discharged the plaintiff and held that there had been no probable cause shown for the issuance of the warrants of arrest. He therefore discharged the plaintiff. Accordingly the arrest of the plaintiff was illegal, null and void in violation of the Fourth Amendment and Fourteenth Amendment to the Constitution of the United States and the searches and seizures of plaintiffs' property were likewise illegal and unsupported by valid warrants issued upon probable cause, in violation of the Fourth and Fourteenth Amendments to the Constitution of the United States of America.

[fol. 6] 19. In pursuance of the conspiracy within twenty-four hours of the said seizure of the various documents, objects and articles, as above set forth, the defendants Eastland and Sourwine caused a subpoena duces tecum purporting to be under the authority of the Internal Security Subcommittee of the Judiciary Committee of the United States Senate, to be directed to defendants James H. Pfister and Thomas D. Burbank, ordering and directing the said de-

fendants to produce all of the said documents, objects and articles at the offices of the said Subcommittee of the United States Senate in Washington, D. C. on October 29, 1963.

20. Plaintiffs allege on information and belief that the issuance of the said subpoena, purporting to require production of the illegally seized documents before defendant Eastland and his Committee is part of the above described conspiracy, and is in furtherance of the object of the conspiracy to deprive plaintiffs of their constitutional rights; that the purpose of the conspiracy, among others, was to avoid the decisions of the United States Supreme Court prohibiting the enforced production of membership lists of organizations seeking enforcement of minority rights and guarantees of the equal protection clause of the United States Constitution; that the entire operation consisting of search, seizure and arrest of the plaintiff, and issuance of the subpoena as above set forth, was for the purpose of obtaining the books, records and membership lists of plaintiffs, in violation of the laws, statutes and Constitution of the United States.

21. The use of any of the documents, objects or articles so seized in any manner, by any person acting under color of state or federal authority would violate the constitutional rights of plaintiffs and in particular the rights guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution in that the said documents, ob-
[fol. 7] jects or articles are the fruit of an illegal search and seizure perpetrated for the purpose of securing membership lists and other documents and information in defiance of the United States Constitution.

22. In further pursuance of this conspiracy defendants Burbank, Willie and Pfister, at the request of defendants Eastland and Sourwine secretly and surreptitiously, without warrant or authority of law, transferred a portion of said books, records, documents and other articles belonging to the plaintiffs out of the jurisdiction of the

United States District Court for the Eastern District of Louisiana. Plaintiffs had instituted in that Court a proceeding under appropriate federal statutes to obtain the return of said documents and articles, and to receive appropriate redress under the law for the illegal acts of the defendant conspirators. In order to evade the jurisdiction of that Court, the defendants caused to be transferred a portion of the said documents, records and other articles to the District of Columbia. Upon information and belief said documents, articles and records are presently in the possession of defendants Eastland and Sourwine in the District of Columbia. Other documents and records, all belonging to the plaintiffs, illegally and in violation of the Constitution of the United States seized from them, were also secretly and surreptitiously transferred to a State Court House in the State of Mississippi, and are presently in the possession of defendant Eastland.

23. That the arrest of plaintiff James A. Dombrowski, and the search of his office, residence and automobile, all without lawful authority, caused to said plaintiff intense mental and emotional pain and suffering, embarrassment and humiliation, as did the attendant and resultant publicity caused thereby.

24. Defendant, Allstate Insurance Company, has issued to the City of New Orleans a policy of liability in-
[fol. 8] surance purporting to insure the said municipal corporation against legal liability resulting from delict on the part of any of its agents, servants, employees, including the police officers named herein, as well as others acting in behalf of defendant municipal corporation in the transactions above described; that the said policy of insurance was in full force and effect on October 4, 1963, and at all times pertinent herein.

25. Plaintiff Dombrowski seeks damages herein for the false arrest, the search of his office, home and automobile and the seizure of his personal and business papers and

documents and other objects and articles, and for the humiliation and embarrassment and mental and emotional pain and suffering caused thereby in the full sum of $250,000.00 against defendants Burbank, Pfister, Willie, Eastland, Sourwine, the City of New Orleans and Allstate Insurance Company, jointly and in solido.

26. Plaintiff Southern Conference Educational Fund, Inc., seeks damages herein for the illegal search of its office and the illegal seizure of books, records, documents and other articles belonging to it in the full sum of $250,000.00 against defendants Burbank, Pfister, Willie, Eastland, Sourwine, the City of New Orleans and Allstate Insurance Company, jointly and in solido.

27. The various documents, books, records, files, articles and objects seized from the plaintiffs are vital in the operation of their business affairs. Plaintiffs will suffer irreparable injury unless the said documents, articles and objects are returned forthwith.

The defendants are threatening to and continue to threaten to utilize the said documents, papers, lists, and other articles all of which were illegally seized from the [fol. 9] plaintiffs, for the purpose of harassing the plaintiffs and the members of the plaintiff corporation in their exercise of their rights under the First and Fourteenth Amendments to the Constitution of the United States. In particular the defendants threaten and continue to threaten to utilize this illegally seized material to intimidate and deter the plaintiffs and the members of the plaintiff corporation from utilizing rights guaranteed to them under the Constitution of the United States in their efforts to secure the implementation of the guarantees of the equal protection clause of the Fourteenth Amendment.

Unless this Court grants the relief prayed for the plaintiffs and the members of the plaintiff corporation will suffer immediate and irreparable injury in that the defendants will seek to utilize this seized material in attempts

to deter, frighten and intimidate them from exercising rights guaranteed by the First and Fourteenth Amendments.

Unless this Court grants the relief prayed for the members of the plaintiff corporation, its friends, supporters and contributors will be subject to continual harassment, intimidation and deterrence of the exercise of their constitutional rights under the First and Fourteenth Amendments to the Constitution of the United States.

28. Plaintiffs have no adequate remedy at law with respect to their rights in the illegally seized property.

29. There has been no previous application for this relief.

Wherefore, plaintiffs pray for the following relief:

(1) That a permanent injunction issue, restraining the defendants, their agents and all persons acting in concert with them from using in any manner whatsoever any of [fol. 10] the various documents, books, records or other objects seized by them or by any of them on or about Ootober 4th, 1963, or from using in any manner whatsoever any photographs, photocopies, or any other copies which may have been made by them at any time following the seizure of the said objects, and ordering the defendants and each of them to return to the plaintiffs any copies, photocopies, or copies by any other process of the said documents, books, records, articles and objects which they may have procured, and ordering the defendants to return to the plaintiffs all of the documents, books, records, or other objects which were seized from the plaintiffs on or about October 4th, 1963.

(2) That judgment be entered in favor of plaintiff Dombrowski against the defendants jointly and in solido in the sum of $250,000.00 together with legal interest thereon and for all costs of these proceedings, and

(3) That judgment be entered in favor of plaintiff Southern Conference Educational Fund, Inc., against the defendants jointly and in solido in the sum of $250,000.00 together with legal interest thereon and for all costs of these proceedings, and

(4) That an interlocutory injunction and order be issued restraining the defendants, their agents, their attorneys and all others acting in concert with them, pending the hearing and determination of the prayer for permanent relief from

(a) using in any manner whatsoever any of the various documents, books, records or other objects seized by them or by any of them on or about October 4th, 1963, or from using in any manner whatsoever any photographs, photocopies, or any other copies which may have been made by them at any time following the seizure of the said objects, and [fol. 11] ordering the defendants and each of them to return to the plaintiffs any copies, photocopies, or copies by any other process of the said documents, books, records, articles and objects which they may have procured, and

(b) that an order be entered directing that the defendants forthwith produce and deposit with the Clerk of this Court all of the various documents, books, records or other objects seized by them from the plaintiffs on or about October 4th, 1963 and that these documents, books, records or other objects be held in the custody of the Clerk of this Court until the hearing and determination of the prayer for permanent relief,

And for such other relief as may to this Court be deemed just and proper—

Plaintiffs respectfully pray that the above relief be granted.

Plaintiffs by their Attorneys;
Kunstler Kunstler & Kinoy, 511 Fifth Avenue, New York 17, N. Y., by Arthur Kinoy, Michael J. Kunstler, William M. Kunstler;

Milton E. Brener, 1304 National Bank of Commerce Bldg., New Orleans 13, Louisiana;

William M. Kunstler, 1101 Vermont Avenue, N.W., Washington, D. C.;

Dillon and Dillon, 1625 I St. N. W., Washington, D. C.

[fol. 12] IN UNITED STATES DISTRICT COURT

OPINION OF THE COURT

The Court: This is an action against Senator Eastland, the Chairman of the Senate Judiciary Committee, J. G. Sourwine, the counsel of one of the subcommittees of that Committee, and numerous other defendants. Only Senator Eastland and Mr. Sourwine have been served with process. The other defendants have not been served and have not appeared and consequently they are not before the Court.

The action has two aspects insofar as the two defendants who have appeared are concerned. First, it seeks an injunction against the reproduction and use of certain documents that have come into the possession of the Senate Judiciary Committee. Second, it seeks money damages. Although in form only one count is set forth, actually there are two claims for relief or two causes of action, which for the sake of clarity should be set forth as two separate counts.

The plaintiff has moved for a preliminary injunction against the two defendants who have appeared and now seeks to withdraw that motion, stating, however, that it desires to renew it if it can secure additional evidence which

it proposed to do, in part at least, by taking the deposition of one of the defendants.

Counsel for the two defendants contends that the cause of action for an injunction does not set forth a valid claim for relief and that under no set of circumstances that could be proven thereunder could the plaintiff prevail and counsel for the two defendants accordingly ask the Court to dismiss that cause of action as to them at this time.

This procedure has been approved by the Supreme Court in Mast Foos & Company v. Stover Manufacturing Company, 177 U. S. 485, 495.

This case involves the basic principle of constitutional law of separation of power. Sometimes we tend, amidst dealing with numerous details, to forget the basic principles of law and it is useful occasionally to refresh ourselves at the fountain of the basic principles.

[fol. 13] It is elementary that our Federal Government is divided into three coordinate branches. No one of the three may interfere with the activities of either of the other two except in the limited matters as provided by other provisions of the Constitution. Consequently, this Court may not enjoin a Congressional committee from pursuing its activities.

If any authority is needed to support this elementary principle the Court may refer to Hearst v. Black, 66 App. D. C. 313, in which in an opinion written by Judge Groner the Court of Appeals for this jurisdiction held that a Senate committee could not be enjoined from making use of certain telegrams which had come into its possession and which it was claimed by the plaintiff had been seized illegally.

In Methodist Federation For Social Action v. Eastland, 141 F. Supp. 729, a Three-Judge Court in this District, in an opinion written by Circuit Judge Edgerton, held that the courts could not enjoin a subcommittee of the Senate Committee on the Judiciary from printing and circulating a pamphlet. In this case Judge Edgerton made this significant statement:

"We have no more authority to prevent Congress or a committee or public officer acting at the express direction of Congress from publishing a document than to prevent them from publishing the Congressional Record. If it unfortunately happens that a document which Congress has ordered published contains statements that are erroneous and defamatory and are made without allowing the persons affected an opportunity to be heard, this adds nothing to our authority. Only Congress can deal with such a problem. The Constitutional history called to our attention includes no instance in which an English court has attempted to restrain Parliament or an American court to restrain Congress from publishing any statement. This history therefore tends to confirm our view."

[fol. 14] In the light of this discussion the Court will dismiss as to defendants Senator Eastland and Mr. Sourwine the alleged claim for an injunction.

You may submit an order accordingly.

IN UNITED STATES DISTRICT COURT

ORDER—December 18, 1963

This cause having come on for hearing upon plaintiffs' motion for a preliminary injunction to enjoin defendants Senator James O. Eastland, Chairman of the Internal Security Subcommittee of the Judiciary Committee of the United States Senate, and J. G. Sourwine, Counsel for the Subcommittee, from making use of certain documents and records, or copies thereof, presently in the custody and possession of the Subcommittee, and upon consideration of the motion, the opposition thereto, the complaint filed herein and argument of counsel in open court, and it appearing to the court that plaintiff's claims for injunctive relief as set

forth in their motion for preliminary injunction and complaint are invalid on their face in that the granting of such relief by this court would contravene the constitutional requirement of separation of powers and would exceed the jurisdiction of this court, it is by the court this 18th day of December, 1963

Ordered and decreed that plaintiffs' motion for preliminary injunction be and the same hereby is denied; and it is

Further ordered and decreed that so much of plaintiffs' complaint which seeks permanent injunctive relief against these defendants be and the same hereby is dismissed.

The oral opinion delivered by the Court shall constitute the findings of fact and conclusions of law herein.

[fol. 15]

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANTS EASTLAND AND SOURWINE TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT—Filed January 28, 1964

Come now the defendants James O. Eastland, United States Senator from Mississippi and Chairman of the Committee on the Judiciary of the United States Senate and of the Subcommittee on Internal Security of that Committee, and J. G. Sourwine, Chief Counsel, Internal Security Subcommittee of the Committee on the Judiciary of the United States Senate by their counsel and move the Court to dismiss the complaint as to them for failure to state a claim upon which relief can be granted.

Alternatively, the defendants move for summary judgment for the reason that the affidavits filed herewith and made part hereof, and the deposition of J. G. Sourwine on file in this cause, show there is no genuine issue as to any material fact and defendants are entitled to judgment as a matter of law.

Defendants incorporate herein and as part hereof their affidavits earlier filed with the Court as part of their op-

position to plaintiffs' motion for a preliminary injunction, photocopies of which are attached for the convenience of the Court.

Also incorporated herein and made part hereof are the following affidavits which will be identified as Exhibits:

1. Affidavit of James H. Pfister, Chairman of the Joint Legislative Committee on Un-American Activities for the State of Louisiana, executed on January 4, 1964, and House Concurrent Resolution No. 13, Regular Session, 1960, marked as Exhibit A to the affidavit ..... Exhibit 1

[fol. 16]

2. Affidavit of Jack N. Rogers, member of the bar of the State of Louisiana, and of the Supreme Court of the United States, and Counsel for the Joint Legislative Committee on Un-American Activities of the State of Louisiana, executed on January 25, 1964 ..... Exhibit 2

3. Affidavit of Thomas D. Burbank, Director of Public Safety and Superintendent of State Police of the State of Louisiana, executed on January 3, 1964 ..... Exhibit 3

4. Affidavit of Major Russell R. Willie, Supervisor of Bureau of Identification, State Police of the State of Louisiana, executed on January 3, 1964 ..... Exhibit 4

5. Affidavit of Mrs. Laura Nicholson, Employee and Secretary, Joint Legislative Committee on Un-American Activities of the State of Louisiana, executed on January 3, 1964 ..... Exhibit 5

6. Affidavit of Senator James O. Eastland, executed on December 4, 1963 will be referred to as ..... Exhibit 6

7. The affidavit of J. G. Sourwine, executed on December 4, 1963 will be referred to as ..... Exhibit 7

David C. Acheson, United States Attorney; Joseph M. Hannon, Assistant United States Attorney.

Of Counsel: Roger Robb.

[fol. 17]

IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION OF DEFENDANTS EASTLAND AND SOURWINE FOR SUMMARY JUDGMENT—March 26, 1964

This cause having come on for hearing upon the motion of the defendants James O. Eastland and J. G. Sourwine to dismiss, or in the alternative for summary judgment, and upon consideration of said motions, the memoranda of points and authorities, the exhibits and affidavits in support thereof and in opposition thereto, and upon consideration of oral arguments of counsel for the parties made in open court, and it appearing to the court that there exists no genuine issue of material fact and that said defendants are entitled to judgment as a matter of law, it is by the Court this day of March 1964,

Ordered that summary judgment be and the same hereby is granted for the defendants, Eastland and Sourwine, and it is

Further ordered that the action be and thesame hereby is dismissed.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed April 3, 1964

Further Ordered that the action be and the same hereby Southern Conference Educational Fund, Inc. plaintiffs

above named, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the order granting summary judgment for defendants entered in this action on the day of March, 1964.

Walter E. Dillon, Jr., Attorney for Appellants, 1625 Eye Street, N.W.

[fol. 18]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JAMES A. DOMBROWSKI, IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION

State of Louisiana,
Parish of Orleans, ss.:

Before Me, the undersigned authority, duly commissioned and qualified in and for the Parish and State first above written,

Personally Came and Appeared: James A. Dombrowski, who, after being first duly sworn, deposed and said:

That on October 4, 1963, officers of the New Orleans Police Department and the Louisiana State Police Department forcibly entered the office of the Southern Conference Educational Fund, Inc. at 822 Perdido Street in this City and the residence of appear [sic] at 715 Governor Nicholas Street in New Orleans, and his automobile located nearby, and that the said officers seized in the course of each of these searches, quantities of books, records, files, documents, articles and objects and retained them in their, the police, custody; that many of these documents, books, records, files, documents, articles and objects are vital to the normal every day operation of the business of the Southern Conference Educational Fund, Inc., of which appearer, James A. Dombrowski, is Managing Director, and that the return of these various documents, books, and records, etc. is vital therefor; that appearer will suffer irreparable in-

jury unless the defendants in these proceedings are enjoined and restrained immediately from disposing of the said documents, etc., or surrendering their possession to other persons, and unless the said documents, etc., are returned forthwith.

James A. Dombrowski

[fol. 19]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF MILTON E. BRENER, IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION

State of Louisiana,
Parish of Orleans, ss.:

Before Me, the undersigned authority, duly commissioned and qualified in and for the Parish and State first above written,

Personally Came and Appeared: Milton E. Brener, who, after being first duly sworn, deposed and said:

That he is one of the attorneys herein; that following the arrest and booking of James A. Dombrowski, Benjamin E. Smith and Bruce Waltzer on October 4, 1963, with violation of the Louisiana Revised Statute 14:358 et seq. and 14:390 et seq. no criminal charges were lodged in the Criminal District Court for the Parish of Orleans which has jurisdiction over the alleged offenses; that no affidavit was filed by any arresting officers or any other persons, nor was there any bill of information filed or indictment returned; that on motion of petitioners a preliminary hearing was held before the Honorable J. Bernard Cocke, Judge of Section "E" of the said Criminal District Court, for the purpose of determining whether the State had probable cause for the arrest of these petitioners, and to further determine whether said petitioners should be bound over for trial or whether they should be discharged; that after hear-

ing evidence adduced by the State the Court summarily and immediately ordered the said Dombrowski, Smith and Waltzer discharged holding that no probable cause existed as a legal basis for the arrest of any of the said three petitioners.

Milton E. Brener

[fol. 20]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JAMES A. DOMBROWSKI, IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

State of Louisiana,
Parish of Orleans, ss.:

Before Me, the undersigned authority, duly qualified and commissioned in and for the Parish and State first above written,

Personally Came and Appeared: Dr. James A. Dombrowski who, after being first duly sworn, declared as follows:

I am a graduate of Union Theological Seminary in New York City where I have served in the past as Instructor. I am also a Doctor of Philosophy in philosophy. I have served as the Executive Director of Southern Conference Educational Fund Inc. since its inception in 1946. The sole purpose of this organization is the elimination of segregation and all forms of discrimination based on race in the South through education and other non-violent methods. My sole interest in political action is likewise in the field of Civil Rights, and my aims and purposes in that regard are identical to the expressed aims and purposes of the Southern Conference Educational Fund. SCEF is not, and has never been a communist or subversive organization. I am not and have never been a communist or a subversive. My own activity and the activity of SCEF is lawful and neither I, nor this organization are, or have

been engaged in any unlawful or illegal activity, nor have I or SCEF violated any of the provisions of R. S. 14:358 et seq. or 14:390 et seq.

The activities of myself and SCEF are not secret, nor is there anything secretive about the operation of SCEF, or my own functions therein. On the contrary, it is our purpose to obtain as wide an audience to our advocacy in behalf of Civil Rights as is possible. SCEF publishes con- [fol. 21] siderable quantities of literature in the field of Civil Rights, all of which is available to the public, including all defendants in this case. In addition, SCEF publishes a monthly newspaper entitled "The Southern Patriot" for the purpose of advancing the cause of SCEF. One or more of the defendants, or others acting in their behalf, subscribe to "The Southern Patriot", and the defendants have thus had access to all material published in this newspaper for a considerable period of time. Nothing subversive or communist in nature has ever been published by SCEF either in "The Southern Patriot" or in any of the other literature.

On October 4, 1963, at about 3:00 P.M. a large moving van was driven up to the entrance of the office of SCEF at 822 Perdido Street accompanied by five officers of the Louisiana State Police, assisted by approximately seven New Orleans Police Officers and Col. F. B. Alexander, Jr., the Staff Director of the Joint Legislative Committee. In addition, there were about twenty trustees from the House of Detention in green fatigue uniforms. These trustees were lined up in the hallway of the building at 822 Perdido Street. The officers forcibly entered the offices and proceeded to break open one of the doors near by with sledge hammers and pick-ax. This was done under the mistaken impression that it was the door to the office of the SCEF. The raid continued for approximately four hours, during which time the office was completely ransacked and almost literally cleaned out. One of the officers took my crutches, dismantled them and inspected the insides. The block was soon filled with many curious onlookers, photographers

and reporters. I was placed under arrest and confined in the District Station. Some of the officers involved proceeded to my home where only my wife was present and likewise ransacked my home at 715 Governor Nichols Street. They likewise searched my automobile located nearby.

[fol. 22] I have read the applications for search warrants of the office, my home and car and for my arrest warrant, as well as the warrants themselves, as well as the affidavits filed in this case.

The statement in the application for the search of 822 Perdido Street that "The Southern Conference Educational Fund is a 'subversive organization' as defined in R. S. 14:358 et seq. and is being knowingly operated as such by James Dombrowski in violation of said statute," is an untrue allegation. SCEF is not subversive and is not being operated as such by me or anyone else, nor has it ever been cited as such by any official body. To my knowledge no communist has frequented these premises or done business with me on the premises or anywhere else. There was no communist political propaganda on the premises nor has there ever been. The statement in the applications as well as in the affidavits filed in this case that I have been identified twice in sworn testimony as a communist fails to include the significant facts that these alleged identifications were made in 1954, and by witnesses not subject to cross-examination, both of whom were completely discredited and proven to have committed perjury. The "sworn testimony" was immediately challenged by me under oath as an untruth in the presence of the two individuals who made the charges. No charges of perjury were brought either against me or my accusers.

The statements in the affidavits filed in this case that SCEF has been cited as a communist front organization is likewise not correct. Despite the testimony of the two individuals, one of whom accused me of being a communist, and the other who accused me of "seeming" to be

a communist, the Eastland Committee in its report in 1955 did not cite SCEF as a subversive organization or as a communist front organization. Whatever the committee may have found to be the case, the report did not cite SCEF as subversive or as a communist front.

[fol. 23] The application for the search of my vehicle, likewise signed by Willie, states falsely that SCEF is a subversive organization. It also contains the allegation that I am an "identified communist" which is untrue by virtue of the misrepresentations and omissions above mentioned.

The same misrepresentations and omissions are set forth in the application for the search of my home and in the application of my arrest warrant. The latter untruthfully states that I entered into a conspiracy to violate 14:358 et seq. and that I was guilty of distributing and storing communist propaganda.

I note that all of the warrants, that for the search of my office, my home and my automobile, authorized the seizure of "books, records, and files of the Southern Conference Educational Fund, Inc. and James A. Dombrowski, plus any communist political propaganda and communist party records." Tremendous quantities of materials were seized which were not described even by the terms of the warrants. Included among such materials were approximately $100 in postage stamps, approximately 1500 to 2000 books and pamphlets including many from my personal library on literature, philosophy, religion and sociology, the pictures from the office wall including a photograph inscribed by Mrs. Eleanor Roosevelt, and the complete inventory of thousands of pamphlets, brochures and other literature concerning integration, and several thousand blank receipt forms and blank stationery and letterheads. A more complete description of part of the property seized is as follows:

1. A four-drawer iron file, letter-size, containing all the corporation correspondence relating to finance Board of Directors (about 100 individual file folders of board members);

2. A four-drawer iron file similar to the one listed above containing correspondence with individuals, [fol. 24] staff members, organizations; material on special projects sponsored by the Fund.

3. A four-drawer wooden file, letter-size, containing a file of clippings on integration, some corporation correspondence on current projects; personal papers of James A. Dombrowski including a folder with certain corporate certificates.

4. Several transfer files containing corporate records and correspondence. Number of files not certain, perhaps four to six.

5. Wooden library index file containing about 16 to 20 thousand 3x5 cards.

6. Library of about 1500 to 2000 (est.) books and pamphlets, primarily on integration but including many books from my personal library on literature, philosophy, religion, sociology, etc.

7. Contents of my desk as well as the contents of two additional desks and everything on a large work table. From my desk, my personal check book containing some checks drawn to my name, all of my personal bank statements and other personal property.

8. Financial records of the corporation including cash book, ledger, journal, auditors' reports, cancelled checks and bank statements.

9. A file of "The Southern Patriot" for 21 years.

10. Photographs illustrating the southern integration movement over a period of about 20 years, largely from "The Southern Patriot" file.

11. Pictures from my office wall, including a photograph inscribed to me by Mrs. Eleanor Roosevelt, a [fol. 25] letter from Franklin D. Roosevelt to Dr. Frank Graham, president of the Southern Conference for Human Welfare; a letter to me from Albert Einstein; a photograph inscribed to me from Mrs. Mary McLeod Bethune; photograph inscribed of Aubrey W. Williams and friend; a framed award to "The Southern Patriot" by the School of Journalism of Lincoln University;

12. Three posters from my office wall: one a full page ad from an Atlanta paper by the Committee on Appeal for Human Rights; a poster in color WE SHALL OVERCOME from the March on Washington for Jobs & Freedom; and a full page ad from the "New York Times" entitled "Love, the Greatest thing in the World."

13. Contents of a storeroom including records, several thousand sheets of blank stationery, letterheads, bond paper, etc., probably five to ten thousand blank receipts, numbered and printed in duplicate and triplicate, also various forms; probably 5M to 10M pamphlets, brochures, etc.

14. Mailing list of "The Southern Patriot" about 10,000 names.

The entire mass of articles seized constituted about 75 or 76 large cartons of evidence and completely filled the huge truck which was used to transport the seized material. None of the seized material consisted of communist or subversive propaganda, nor did any of it contain any evidence of communism or subversion. I have been informed that 27 cartons of evidence have been returned and are being held in the District Attorney's Office and that I am entitled to pick up these cartons. On the advice of my attorney, I am refusing to do so at this time.

James A. Dombrowski

[fol. 26]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF BENJAMIN E. SMITH, IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

State of Louisiana,
Parish of Orleans, ss.:

Before Me, the undersigned authority, duly qualified and commissioned in and for the Parish and State first above written,

Personally Came and Appeared: Benjamin E. Smith, who, after being first duly sworn, declared as follows:

I am a practicing attorney-at-law in the City of New Orleans, and a member of The Southern Conference Educational Fund, Inc. I am presently serving as Treasurer of that organization. The sole purpose of this organization is the elimination of segregation and all forms of discrimination based on race in the South through education and other non-violent methods. My sole interest in political action is likewise in the field of Civil Rights, and my aims and purposes in that regard are identical to the expressed aims and purposes of the Southern Conference Educational Fund. SCEF is not, and has never been a communist or subversive organization. I am not and have never been a communist or a subversive. My own activity and the activity of SCEF is lawful and neither I, nor this organization are, or have been engaged in any unlawful or illegal activity, nor have I or SCEF violated any of the provisions of R. S. 14:358 et seq. or 14:390 et seq.

The activities of myself and SCEF are not secret, nor is there anything secretive about the operation of SCEF, or my own functions therein. On the contrary, it is our purpose to obtain as wide an audience to our advocacy in behalf of Civil Rights as is possible. SCEF publishes considerable quantities of literature in the field of Civil Rights, all of which is available to the public, including all defen-

dants in this case. In addition, SCEF publishes a monthly [fol. 27] newspaper entitled "The Southern Patriot" for the purpose of advancing the cause of SCEF. One or more of the defendants, or others acting in their behalf, subscribe to "The Southern Patriot" and the defendants have thus had access to all material published in this newspaper for a considerable period of time. Nothing subversive or communist in nature has ever been published by SCEF either in "The Southern Patriot" or in any of the other literature.

I represented Dr. Dombrowski when he appeared before the Internal Security Subcommittee during the course of its hearing in New Orleans, La., in March of 1954. Dr. Dombrowski answered all questions placed to him by the committee except those concerning the identity of contributors. He denied under oath that he was a communist or that he had ever been. In the presence of the two individuals who accused him of being either a communist or under communist control, Dr. Dombrowski accused these witnesses of testifying untruthfully. I was denied any right to cross-examine either of the accusing witnesses. Dr. Dombrowski has never been charged with having committed perjury during the course of his testimony. The report of the committee was published in 1955 and stated in pertinent part as follows:

> "The Southern Conference Educational Fund, Inc. was initially an adjunct of the Southern Conference for Human Welfare. After the exposure of the Southern Conference for Human Welfare as a Communist front, it began to wither and was finally dissolved, but the Southern Conference Educational Fund, Inc. continued. The official paper, the *Southern Patriot,* which was published by the Southern Conference for Human Welfare, was taken over by the Southern Conference Educational Fund, Inc., which professes the same ostensible purpose.
>
> [fol. 28] "Dr. James A. Dombrowski was identified as executive director of the Southern Conference Edu-

cational Fund, Inc., who, immediately prior to this assumption of his present office, had been administrator of the Southern Conference for Human Welfare. Dr. Dombrowski was identified by a witness as one who, to the witness' certain knowledge, had been a member of the Communist Party. He was also identified by another witness as one who had accepted Communist Party discipline."

On October 4, 1963, my law office and my home and automobile were raided and ransacked by a number of State Police Officers assisted by certain local policemen. I was arrested pursuant to a warrant of arrest and charged with violation of R. S. 14:358 and 14:390 et seq. Arrested at the same time was James Dombrowski. I have worked in close association for the past six years with Dr. Dombrowski and he has never, to my knowledge, advanced the cause of communism, nor is he a communist or a subversive. Nor was he acting in violation of any law of the State of Louisiana including 14:358 and 14:390 et seq. to my knowledge.

Dr. Dombrowski and I, along with Bruce Waltzer, my law partner, were paroled shortly after the arrest. No formal charges were ever lodged against us for violation of the statutes with which we were booked. However, on October 25, 1963, on motion of Dombrowski, Waltzer and myself, a preliminary hearing was held in Section "E" of the Criminal District Court for the Parish of Orleans to inquire into the validity of the arrest. Testimony was given by the defendant in this case, Russell Willie, and by Jack Rogers, attorney for the Joint Legislative Committee. At the conclusion of the hearing, the three of us were discharged on the grounds that the arrest warrants were improvidently issued and the arrests illegal.

[fol. 29] Because we had learned during the course of the hearing that the Internal Security Sub-Committee of the Judiciary Committee of the United States Senate was [sic] subpoenaed all of the documents seized from our

respective homes and offices, and that the subpoenas were returnable on the 29th of October, we filed on October 27th a complaint in the Federal District Court seeking an injunction to prohibit the removal of the various articles and objects and documents from the State. Our request for a temporary restraining order to this effect was submitted to the Honorable Judge Robert Ainsworth on the morning of Sunday, October 27, 1963. We were subsequently advised through the Clerk of the Federal District Court on the afternoon of October 27, 1963, that Judge Ainsworth had spoken either with Col. Burbank, the defendant herein, or with his representative, and had been assured that all of the seized material was still at the State Police Headquarters in Baton Rouge. On instructions from Judge Ainsworth to notify the other parties to be present in his office at 9:00 A. M. on the morning of Monday, October 28, 1963, for the purpose of discussing the requests for a temporary restraining order, telegrams were sent to all defendants, including Burbank and Willie. We were subsequently advised that the defendants could not appear by 9:00 A. M. on the morning of Monday, the 28th, and that the conference was being rescheduled for 12:00 Noon on the same day. At the start of the conference at 12:00 Noon all persons present in the office of Judge Ainsworth were advised that all of the seized materials had been removed from the State and delivered to Woodville, Mississippi. A telegram was exhibited from J. G. Sourwine, the attorney for the Internal Security Sub-Committee which had been dated the 27th of October, 1963, at 11:43 P. M. This telegram allegedly required the removal of the documents to Woodville. We were furnished with copies of the Sourwine telegram, and a letter dated October 5, 1963, [fol. 30] addressed to Col. Burbank by Mr. Sourwine wherein Col. Burbank was alleged to have agreed to act as temporary custodian of all of the documents.

Benjamin E. Smith

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF ARTHUR KINOY, SWORN TO FEBRUARY 18, 1964, IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

State of New York,
County of New York, ss.:

Arthur Kinoy, being duly sworn, deposes and says:

1. I am one of the counsel in the above-entitled action. I make this affidavit in support of plaintiffs' Points and Authorities and Answer to Defendants' Motion to Dismiss or in the Alternative for Summary Judgment.

2. I attach hereto as Exhibit "A" and make a part hereof, a clipping which appeared in the *New Orleans Times Picayune* on February 6, 1964. The information contained in this news item was brought to the attention of counsel for the plaintiffs on Friday, February 7, 1964. This information was received, accordingly, after the filing of defendant's motion to dismiss or in the alternative for summary judgment.

As stated in the Points and Authorities and Answer to Defendants' Motion, counsel for the plaintiffs proposes to pursue this matter through the normal and tested procedures of litigation. Counsel cannot here assert to the Court that the information contained in the news story is either accurate or complete. However, counsel suggests that any determination of the motion for summary judgment would require the exploration of this question through [fol. 31] the procedures of litigation either by affidavit or deposition. The information contained in the article, if true, relates materially to the assertion of fact of the defendants that their actions were in some way authorized by the Internal Security Subcommittee of the Senate. The information contained in the *Times Picayune* news story, if true, would further indicate to the Court the presence of a serious and sharply disputed material issue of fact which would require the denial of any motion for summary judgment.

Furthermore, under Rule 56, Subdivision (f) of the Federal Rules of Civil Procedure, upon the facts stated in this affidavit the Court may deem it appropriate to refuse the application for judgment, or "order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had". See Rule 56 (f), Federal Rules of Civil Procedure.

Arthur Kinoy

IN UNITED STATES DISTRICT COURT

EXHIBIT "A", ANNEXED TO FOREGOING AFFIDAVIT

COPYING OF SCEF RECORDS IS HIT

KEATING PROTEST SENATE UNITS MOVE

Sen. Kenneth B. Keating (R-N. Y.), a member of the Senate Internal Security Subcommittee, has protested the subcommittee's subpoena of records of the Southern Conference Educational Fund.

Records of the New Orleans based group were first seized last Oct. 4 at the request of the Louisiana Joint Legislative Committee on Un-American Activities.

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Sen. Keating was absent Nov. 14 when the Senate subcommittee approved a resolution authorizing the copying [fol. 32] of SCEF records. Monday, he expressed "grave concern" and said no such action should be taken in the future without full discussion of the subcommittee.

His statement was made in a letter to subcommittee chairman James O. Eastland (D-Miss.).

He asked Sen. Eastland what legislative purpose the subpoena had. He said he opposed the federal subpoena of records in cases before state courts.

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[fol. 36] IN UNITED STATES DISTRICT COURT

EXCERPT FROM SOURWINE DEPOSITION

Q. [Mr. Brener] How many subpoenas were actually served on that day by your Committee, I mean, by you?

A. [Mr. Sourwine] I think five.

Q. Did you bring the forms with you?

A. Yes, I took the subpoena forms with me.

Q. Blank?

A. Signed by Senator Eastland in blank, subject to being filled in in accordance with his instructions and then I had them filled in down there. I caused them to be filled in down there.

Q. When did Senator Eastland sign them, do you know?

A. No, I do not know when the Senator had signed them. I simply took them from the file when I left.

Q. In other words, he has, as a routine matter, subpoenas signed in blank, is that correct, to which you have access?

A. I do not know what he has.

Q. You have?

A. There is locked up in the Committee offices a folder which contains a number of subpoenas signed by the Senator in blank. These are papers, of course, of no force and effect until they are filled in and served, and if filled in and served in accordance with the Senator's instructions, they become his subpoena, the subpoena of the Committee.

Q. Who actually filled in the subpoena?

A. A young lady, whose name I do not recall, who is or was, at the time, secretary to Mr. Jack Rogers. I had asked where and how I might get clerical assistance. Mr. Rogers said he would call his secretary in.

Q. So this was the secretary to Jack Rogers?

A. That is correct. He did call her in and placed her at my disposal, and she did several hours' work for me.

Mr. Robb: This was a Saturday, was it?

The Witness: Yes, it was. I think that is the day you cannot even get a shave or a haircut in New Orleans.

[fol. 37] Mr. Robb: What was that date, for the record?

The Witness: This was the 5th of October.

By Mr. Brener:

Q. You are aware of the fact that the date of the subpoenas is the 4th of October, are you not?

A. I am aware that the date on the subpoenas is erroneous in that record; yes, sir.

Q. It was a typographical error?

A. I assume it was a typographical error. Basically it was my error in failing to catch it before I left the subpoenas go out, before I served them. The young lady filled them in. I did not instruct her to date them the 4th. I assumed they were dated the 5th.

I was sufficiently careless to let them go out that way. They were, in fact, filled in pursuant to my dictation on the 5th and as internal evidence to that, I call attention to the fact that our subpoenas were in the language of the subpoenas used by the Louisiana Committee in obtaining this material from the police and I deliberately used this device as the best way to cover just what they had gotten and to get it all.

And I could not have had that language until I got down there and saw the subpoenas.

Q. The subpoenas are made returnable on October 29, 1963. Do you recall that?

A. Yes, I believe that is right.

Q. Was that for any particular reason that you chose that date?

A. It was a date far enough ahead to allow time for transportation of records, if there had been any problem about that. It was a week day. I do not know of any other special reason.

Q. You appointed Colonel Burbank, the Commanding Officer of the Louisiana State Police, as custodian, did you not?

A. I did. Appointed is perhaps a strong word. I desig-
[fol. 38] nated him. I made arrangements with him to so act. And when he had agreed, I gave him a letter confirming the agreement and specifying the conditions of the custodianship.

Q. Did the Committee, or subcommittee, by resolution authorize the submission of the subpoenas?

A. No.

Q. Is it customary for them to do so?

A. No.

Mr. Robb: You mean these particular subpoenas?

Mr. Brener: These particular subpoenas.

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IN UNITED STATES DISTRICT COURT

MOTION FOR PRELIMINARY INJUNCTION—
Filed October 31, 1963

The plaintiffs, James A. Dombrowski and Southern Conference Educational Fund, Inc., by their attorney, Walter E. Dillon, Jr., moves the Court for an order granting a temporary restraining order and preliminary writ of injunction against the defendants, Senator James Eastland and J. G. Sourwine their agents and employees, pending this suit, and until further order of the Court, upon the grounds and in accordance with the prayers as set forth in the complaint filed herein.

Walter E. Dillon, Jr., Attorneys for Plaintiffs.

[fol. 39]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JAMES O. EASTLAND

James O. Eastland, United States Senator from Mississippi, first having been duly sworn, deposes and says:

1. I am United States Senator from Mississippi, and Chairman of the Committee on the Judiciary of the United

States Senate and of the Subcommittee on Internal Security of that Committee.

2. I have read the complaint filed in this cause wherein I am named as a defendant. In particular, I have read paragraph 22 thereof.

3. I do not now have in my personal possession nor have I ever had in my personal possession either in the District of Columbia, or in the State of Mississippi or anywhere else, any of the documents, records or articles referred to in the complaint.

4. All such documents, records and articles, excepting those which have been returned to the Joint Legislative Committee on Un-American Activities of the State of Louisiana from which they were subpoenaed by the Subcommittee on Internal Security are now in the custody, possession and control of the Internal Security Subcommittee of the Committee on the Judiciary of the United States Senate and are being evaluated pursuant to the resolution adopted by the Subcommittee, November 14, 1963, a copy of which resolution is attached hereto and made part hereof as Exhibit A.

5. The subpoenas of the Subcommittee on Internal Security served upon the aforesaid Louisiana State Legislative Committee were authorized by me as Chairman of the Senate Committee on the Judiciary and the Subcommittee on Internal Security in a telephone conversation I [fol. 40] had with Mr. J. G. Sourwine, Counsel to the Subcommittee, on October 5, 1963, when Mr. Sourwine was in Baton Rouge, Louisiana.

6. I had nothing whatever to do with the acquisition of the SCEF material by the Louisiana Committee, or with the preparation, issuance, or service of the arrest and search warrants whereunder the Louisiana authorities obtained the material of SCEF which was later subpoenaed

by the Senate Internal Security Subcommittee. I deny emphatically that I was party to any conspiracy to obtain and execute such warrants, or to subpoena the material.

James O. Eastland, United States Senator.

IN UNITED STATES DISTRICT COURT

EXHIBIT A, ANNEXED TO FOREGOING AFFIDAVIT

November 14, 1963

Upon the conclusions of the testimony of the second of two witnesses heard in executive session, the Subcommittee considered and discussed the handling of material subpoenaed from the Joint Legislative Committee on Un-American Activities of the State of Louisiana.

Present: Senators Eastland, Dodd, Hruska, Dirksen and Scott.

After discussion, and on motion of Senator Dirksen, it was ORDERED that the Chairman be authorized to appoint a Task Force consisting of Senators Eastland, Johnston, Dodd, Hruska and Scott to evaluate the subpoenaed material progressively with respect to its value to the Subcommittee's investigation and to make determination from time to time respecting particular papers, documents, or other material to be inserted verbatim in the record of the Subcommittee; that all of the material not clearly irrelevant to the Subcommittee's investigation of Communist activity [fol. 41] generally, of Communist front activity, of Communist infiltration of organizations and groups, and/or the source of funds for Communist or Communist front activities be ordered into the Committee's hearing record by reference subject to the later determination of the Task Force respecting particular items which should be entered into the record verbatim; and that all of the original records obtained under the subpoena be photostated for the permanent records of the Subcommittee and, when so photostated,

be returned promptly to the possession of the Joint Legislative Committee on Un-American Activities of the State of Louisiana.

JAMES O. EASTLAND
Chairman

I consent and agree to the foregoing procedure.

JOHN F. MCCLELLAN
OLIN D. JOHNSTON
ROMAN L. HRUSKA

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF J. G. SOURWINE

District of Columbia, ss.:

J. G. Sourwine, being first duly sworn on oath, deposes and says:

1. From December 21, 1950, to January 21, 1955, I was Associated Counsel; from January 22, 1955 to January 24, 1956, I was Chief Counsel; from January 25, 1956, to January 31, 1956, and from October 1, 1956, to January 31, 1958, I was Associate Counsel; and from February 1, 1958, to the present I have been Chief Counsel of the Subcommittee of the Committee on the Judiciary of the United [fol. 42] States Senate to Investigate the Administration of the Internal Security Act and other Internal Security Laws, under S. Res. 366, 81st Congress, and (since March 1963) S. Res. 62, 88th Congress. This committee is also known as the Senate Internal Security Subcommittee.

2. The authority and purposes of the Internal Security Subcommittee are stated as follows in S. Res. 62:

"to make a complete and continuing study and investigation of (1) the administration, operation, and enforcement of the Internal Security Act of 1950, as

amended; (2) the administration, operation, and enforcement of other laws relating to espionage, sabotage, and the protection of the internal security of the United States; and (3) the extent, nature, and effect of subversive activities in the United States, its territories and possessions, including, but not limited to, espionage, sabotage, and infiltration by persons who are or may be under the domination of the foreign government or organizations controlling the world Communist movement or any other movement seeking to overthrow the Government of the United States by force and violence."

3. In 1954 the Internal Security Subcommittee investigated the Southern Conference Educational Fund, Inc., to determine what if any subversive influences were operating in or through that organization. Hearings were held in New Orleans, Louisiana, on March 18, 19, and 20, 1954. Among the witnesses who testified during these hearings was James A. Dombrowski, Executive Director of the Southern Conference Educational Fund, Inc.

4. The report of the Senate Internal Security Subcommittee on its investigation of the Southern Conference [fol. 43] Educational Fund, Inc., published in 1955, stated in part as follows:

"The Southern Conference for Human Welfare was conceived, financed, and set up by the Communist Party in 1938 as a mass organization to promote communism throughout the Southern States. Earl Browder, former general secretary of the Communist Party in the United States, in a public hearing, identified the Southern Conference for Human Welfare as one of the Communist Party's 'transmission belts.' Under date of March 29, 1944, the Southern Conference for Human Welfare was cited by the Special Committee on Un-American Activities as a Communist front and, on June 12, 1947, by the Congressional Committee on

Un-American Activities as a Communist-front organization 'which seeks to attract southern liberals on the basis of its seeming interest in the problems of the South,' although its 'professed interest in southern welfare is simply an expedient for larger aims serving the Soviet Union and its subservient Communist Party in the United States.'

"2. The Southern Conference Educational Fund, Inc., was initially an adjunct of the Southern Conference for Human Welfare. After the exposure of the Southern Conference for Human Welfare as a Communist front, it began to wither and was finally dissolved, but the Southern Conference Educational Fund, Inc., continued. The official paper, the Southern Patriot, which was published by the Southern Conference for Human Welfare, was taken over by the Southern Conference Educational Fund, Inc., which professes the same ostensible purpose.

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"Dr. James A. Dombrowski was identified as executive director of the Southern Conference Educational [fol. 44] Fund, Inc., who immediately prior to the assumption of his present office, had been administrator of the Southern Conference for Human Welfare. Dr. Dombrowski was identified by a witness as one who, to the witness' certain knowledge, had been a member of the Communist Party. He was also identified by another witness as one who had accepted Communist Party discipline. • • •"

5. On several occasions prior to July 1963, Jack N. Rogers, Esquire, Counsel to the Joint Legislative Committee on Un-American Activities, State of Louisiana, asked me in my official capacity for information reflected in our files bearing upon various matters under investigation by the Louisiana Committee. Where public source information was available, it was furnished in response to these requests.

6. In July 1963, Mr. Rogers informed me that his Committee was investigating the Southern Conference Educational Fund, Inc. (hereinafter called SCEF), whose headquarters were in New Orleans, and in whose management James A. Dombrowski was still active. Mr. Rogers said that he thought the Committee would eventually subpoena the records of that organization. Knowing from public records that the Internal Security Subcommittee of the United States Senate had itself investigated SCEF in 1954, Mr. Rogers volunteered that if his Committee procured information which might be of interest to the Senate Committee, he would let the Senate Committee know. Sometime later, in August or September, 1963, Mr. Rogers asked me whether, if the Louisiana Committee subpoenaed the records of the SCEF, it might be possible for me and Mr. Mandel, Research Director of the Senate Committee, to come down to Louisiana, and assist in the evaluation of such records. I discussed the matter with Senator Eastland [fol. 45] who stated that it would depend upon what was found in the records; that if they should appear to be within the scope of the investigative authority of the Senate Committee then Mr. Mandel and I might go to Louisiana to look at them. Senator Eastland emphasized, however, that the Senate Committee had no interest in any debates or activities in which SCEF might have engaged with respect to civil rights or racial matters; that the Committee was interested only in material relating to Communist or Communist-front activities, especially Communist infiltration of mass organizations and the financing of Communist fronts.

7. At about 11:45 p. m., on October 4, 1963, while I was at my home in a suburb of Washington, I received a telephone call from Mr. Rogers who stated that his Committee had obtained the records of SCEF and that these records included a great deal of material which he believed would be of interest to the Internal Security Subcommittee. He asked that Mr. Mandel and I come down as soon as possible to assist in evaluation of these records. Mr. Mandel and

I left Washington by air from Friendship Airport at 8:20 a. m., the next morning, October 5. We arrived at Baton Rouge shortly before 11 a. m., Baton Rouge time, on October 5.

8. Having been informed by Mr. Rogers and by Colonel Fred Alexander, Chief Investigator for the Louisiana Committee, of the nature of the documents and the content of certain particular documents which had been secured, I concluded that the records of SCEF in the possession of the Louisiana State Committee did in fact include a substantial quantity of material which would be of interest to the Internal Security Subcommittee of the United States Senate in pursuance of its investigative functions and within the limits of the directive which had been given to me by Senator Eastland. I thereupon reported my con- [fol. 46] clusion to Senator Eastland by telephone, and recommended that all the material obtained by the Louisiana Committee be subpoenaed from that Committee by the Senate Internal Security Subcommittee. Senator Eastland authorized this to be done and thereafter on the same day, October 5, 1963, I served subpoenas duces tecum upon Mr. Pfister, Chairman of the Louisiana Committee, Mr. Rogers and Colonel Alexander calling for the production of all this material. It should be noted that the date "this 4th day of October" on the subpoenas is a typographical error, as the subpoenas were not typed or served until after my arrival at Baton Rouge on October 5, 1963.

9. Immediately following the service of the subpoenas duces tecum on October 5, 1963, I took possession, on behalf of the Senate Internal Security Subcommittee, of all the SCEF material then in the hands of the Louisiana State Committee. I arranged with Colonel Thomas D. Burbank, Superintendent of the Louisiana State Police, for him to hold this material as custodian for the Senate Committee. Subsequently, two staff members of the Internal Security Subcommittee brought the material to the Committee's offices in Washington, D. C.

10. Evaluation by the Senate Committee of the material subpoenaed from the Louisiana Committee proceeded as speedily as possible. It soon became apparent that there was a substantial quantity of material which could not reasonably be expected to be of any value to the Senate Subcommittee in its investigations. This material was promptly prepared for shipment and returned to the Louisiana Committee, being shipped on November 8, 1963.

On November 14, 1963, the Internal Security Subcommittee formally considered the matter of evaluation and disposition of the material secured under subpoena from the Louisiana Committee, and approved a resolution ordering that all the material be placed in the Subcommittee's [fol. 47] record by reference, that it be photostated as speedily as possible, that upon completion of photostating the originals be returned to the Louisiana Committee, and that a task force of five Senators undertake the work of evaluating the material to determine which items should be placed in the record verbatim. A copy of this resolution is attached to the affidavit dated December 4, 1963, of Senator James O. Eastland filed herein.

Work under this resolution is proceeding, and it is anticipated that additional material will be shipped back to the Louisiana Committee each week until all of the material obtained under the subpoena has been returned.

11. The material in the possession of the Senate Internal Security Subcommittee relating to the Southern Conference Educational Fund, Inc., is being studied, evaluated, and used by that Subcommittee pursuant to its duty to make a complete and continuing study and investigation of the extent, nature, and effect of subversive activities in the United States and infiltration by persons who are or may be under the domination of the foreign government or organizations controlling the world Communist movement. The material is directly relevant to these matters. The material relates not only to the activities and personnel of the Southern Conference Educational Fund, Inc., but also to the connections between that organization and other

organizations which appear to be Communist, Communist dominated, or Communist-front organizations, such for example as the Fair Play for Cuba Committee.

12. I had nothing whatever to do with the acquisition of SCEF material by the Louisiana Committee, or with the preparation, issuance, or service of the arrest and search warrants whereby the Louisiana authorities obtained the material of SCEF which was later subpoenaed by the Senate Internal Security Subcommittee. I deny emphatically that I was party to any conspiracy to obtain and execute such warrants, or to subpoena the material.

J. G. Sourwine

[fol. 48]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2678—63

[Title omitted]

PRAECIPE TO WITHDRAW PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION—December 13, 1963

The Clerk of said Court will please withdraw the plaintiffs' preliminary motion for preliminary injunction without prejudice.

I hereby certify that on this 13th day of December, 1963, I mailed, postage prepaid a copy of this praecipe to Joseph M. Hannon, Assistant United States Attorney, U. S. District Court and to Roger Robb, Esq., Woodward Bldg., D. C. attorneys for defendants.

Walter E. Dillon, Jr., 1625 Eye Street, N. W., Washington 6, D. C., Attorney for Plaintiffs.

[fol. 49]

IN UNITED STATES DISTRICT COURT

EXCERPT FROM SOURWINE DEPOSITION—AS CORRECTED

Q. Was there any further investigation by the subcommittee after 1954 into the Southern Conference Educational Fund or Dr. Dombrowski?

Mr. Robb: You mean prior to the present investigation?

Mr. Brener: Yes.

The Witness: I think the answer to that would be yes, in the sense that the Committee maintains a continuing interest in any organization which is subversive or which it considers to be a front organization.

In the sense of an actively pursued investigation to seek particular facts, I think the answer to your question would be, no. In the sense of continuing to maintain a file and to accumulate information which became available, I think the answer would have to be, yes.

* * * * * * *

Q. I want to direct your attention to paragraph five of the affidavit you filed.

A. Yes, sir; I have that before me. It begins, "On several occasions."

Q. Do you recall the first time you spoke to Mr. Rogers concerning that matter that is mentioned in paragraph five? You stated merely as being prior to July. Can you be more specific?

A. Not much more specific. I do not think I heard from Mr. Rogers or knew about him before the Spring of 1962, and it may not have been until the Summer of 1962. I am just not clear. I think the first time that Mr. Rogers ever asked for any information it was a request for assistance in digging out available public source material on the so-called Black Muslims, and I am afraid I was a little disappointing to him, because we had very little help that we could give him on the situation.

[fol. 50] I am not absolutely sure that that was the first request, but I think that is right.

Q. Is it correct that the first contact that you had with Rogers with respect to the SCEF was in July of 1963?

A. I think that is right.

Q. Would you recall the date in July?

A. No, I do not recall the date in July. It was after the Fourth of July.

Q. You heard from him by telephone?

A. I do not think so. I think he was here.

Q. In other words, he spoke to you personally?

A. I think that is right.

Q. Can you tell us, as best you can recall, the substance of the conversation?

A. Well, I think the substance of it is set forth in the affidavit. I will put it in different words, if you wish.

Q. That is quite all right. Did he mention, at that time, the possibility of police raids on the headquarters of the Southern Conference Educational Fund?

A. No, he did not.

Q. He mentioned only subpoena; is that correct?

A. I don't think he mentioned even subpoena at that time. I did, however, have an understanding that he was eventually, probably, going to subpoena the records of the SCEF.

Q. Reading from paragraph 6 of your affidavit where you state "Mr. Rogers said that he thought the Committee would eventually subpoena the records of that organization—

A: Yes, I see this.

Q. Does that refresh your memory as to the conversation concerning subpoena?

A. Yes.

Q. Did he state whether he intended to subpoena the list of contributors, a member's list?

A. No, there was no discussion about the particular records which would be subpoenaed.

[fol. 51] Q. Was there any mention of the fact that in the 1954 hearings Dr. Dombrowski had refused to produce a list of contributors?

A. No, there was not.

Q. There was none?

A. No.

Q. What did you reply to Mr. Rogers when he told you of his plans?

Mr. Robb: What did he what?

Mr. Brener: Reply to Mr. Rogers when he told you of his plans.

Mr. Hannon: Plans. I object to the use of the word plans. I understood Mr. Sourwine to say Mr. Rogers said he thought.

Mr. Brener: I will rephrase the question.

By Mr. Brener:

Q. His proposed plans, his possible plans?

A. I do not believe I made any specific reply to that. There was no reply called for. He was just giving me a piece of information.

Q. Did you convey this information to Senator Eastland?

A. I have no independent recollection of having done so. I may have.

Q. But you do not recall; is that right?

A. No, I do not. I did not, at the time, consider it of particular importance.

Q. You stated that "some time later in August or September of 1963 Mr. Rogers asked me whether if the Louisiana Committee subpoenaed the records of SCEF, it might be possible for me and Mr. Mandel to come down and assist the evaluation."

A. Yes.

Q. How did that conversation come about? Was it by long distance telephone?

A. No, I think that was in person.

Q. Do you recall whether it was August or September?

A. No. I have not been able to place that, sir, precisely. I think it was late August or early September.

[fol. 52] Q. Did Mr. Rogers suggest why he would require your assistance in evaluating this material?

A. Well, require is a pretty strong word. Mr. Rogers did indicate that he felt that Mr. Mandel, particularly, had a background which would enable him to be very helpful in evaluating any information they were able to get.

I think that would be true with regard to any Communist front activity or any subversive activity. Mr. Mandel is a very knowledgeable man in this field. I do not pretend to be as knowledgeable or nearly as knowledgeable as Mr. Mandel is myself, but Mr. Rogers was good enough to include me in the invitation.

Q. Did he discuss, at that time, how he proposed to get the material?

A. No, I do not believe it was specifically discussed. But, certainly, any discussion of it was in the connotation of subpoenaing the material. As a matter of fact, I did not know until after the material had been secured that it had not been secured through subpoena.

It was my understanding that Mr. Rogers had intended to subpoena the material and he changed his line of approach on that practically at the last minute and did it the other way.

Q. Was there any discussion, at that time, of contributor lists?

A. You mean, at the time when Mandel and I—it was suggested we should come to Louisiana, if we could?

Q. Yes.

A. No, there was not.

* * * * * * *

Now you state that about 11:45 p.m. on October 4—

Mr. Robb: Where are we now?

Mr. Brener: Paragraph 7.

[fol. 53] By Mr. Brener:

Q. —that you received a call from Mr. Rogers concerning the fact that his Committee had obtained the records of the Southern Conference Fund. Had you heard from Mr. Rogers at all since his visit to you in August or September?

That is, between that time and the time of this telephone call on October 4th?

A. I am sure I had. I think I may have had one or two letters from him, and I may have had one or two phone calls from him.

Q. Do you recall the nature of the conversations in the course of the telephone calls or the substance of the letters?

A. I can tell you they did not concern the SCEF, if that is what you are trying to get at.

Q. I am trying to find out. In other words, between the August and September visits to you in Washington and the call of October 4, there was no communication between you and Mr. Rogers concerning SCEF; is that correct?

A. To the best of my recollection that is correct; yes, sir.

Q. Where did this call on October 4 reach you? Where were you at the time?

A. At my home in Silver Springs.

Q. Did Rogers tell you where he was calling from?

A. No, he did not. I assumed he was calling from Baton Rouge. That is where he lives.

Q. What did he tell you precisely?

A. The information he conveyed to me was that the Louisiana State Committee had possession of the records and files, all of the records and files, he said, of the Southern Conference Educational Fund, and that he thought that there was a great deal of material in there that would be of interest to us.

* * * * * * *

Q. Was there any particular urgency that caused you to leave within 6 or 7 hours of the telephone call?

A. No, there was no urgency beyond the fact that Jack [fol. 54] was excited about what he considered important evidence and was what I thought naturally anxious to proceed with the evaluation of it.

It was a weekend. It was a good time to go. I had in mind we could go down and if we could settle the question, I could be back the following Monday. I had to be back the following Monday in Washington.

* * * * * * *

Q. Would you please look at this letter of October 5th?

A. Yes, sir; I have looked at it.

Q. In this letter—

A. This is my letter of October 5th to Colonel Burbank.

* * * * * * *

Q. You note that that refers to subpoena of October 4. Is that another error?

A. I am not sure. The subpoenas did bear that date, but the date was in error.

Q. When was this letter typed?

A. October 5.

Q. At the same time when the subpoenas were typed?

A. Not at the same time but a short time subsequent.

Q. The same afternoon?

A. The same afternoon.

Q. By the same individual?

A. By the same girl, yes, sir.

Q. Did you note at the time you signed this that it referred to the subpoena of October 4?

A. I did not note it in the sense of catching the discrepancy; no, sir. I did read it. I did not, however, dictate it. I dictated it, "In discharging," and so forth. I said, "put in the date of the subpoena."

* * * * * * *

Q. You recall clearly that the instructions you gave to the stenographer were to type in today's date, is that correct, on the others, fill in the date of the subpoenas?

A. I do not believe I gave her any specific instructions with regard to the date to put in on either the letter or the subpoenas. I assumed they would be today's date. [fol. 55] When I was dictating the text of the letter, I dictated it about like this:

"Dear Colonel Burbank: By direction of the Chairman and on behalf of the Internal Security Subcommittee"—I note now for the first time that the word "Security" is left out of this letter. I never noticed that before. I am sure I dictated, "Internal Security Subcommittee of the U. S. Senate, I have requested, and you have agreed, that you act for the Committee as temporary custodian of all those certain letters, documents, memoranda and other papers turned over to the Internal Security Subcommittee on this date by the Joint Legislative Committee on Un-American Activities, pursuant to the Committee's subpoena of"—and then I said, "Go ahead and identify the subpoena and the persons." Then I went on to say, "It is understood," and so forth.

Q. Now, subsequently, did you know of a hearing that was to take place in New Orleans in the Criminal District Court at the end of October, October 25, involving the validity of the warrant issued for the arrest of Dombrowski, Ben Smith, a resident of New Orleans, and Bruce Waltzer, a resident of New Orleans, arising out of these raids?

Mr. Hannon: Objection to whether they were raids. Is it one hearing you refer to, Mr. Brener, for all these people?

Mr. Brener: That is correct.

The Witness: I think I read about that hearing before it took place. I know I was informed about it after it took place.

By Mr. Brener:

Q. When were you informed about it, after it took place?

[fol. 56] Mr. Robb: Can you give us the date of the hearing?

Mr. Brener: October 25, 1963.

The Witness: I cannot remember, Mr. Robb, with regard to a particular date, but I am trying to remember it with regard to when it took place. I think I learned of it the day after the hearing.

By Mr. Brener:

Q. And how did you learn of it?

A. I am not sure whether I learned of it first through a telephone call from Mr. Rogers or through an inquiry from a newspaperman. I had several of the latter on that day, that is, the day following the hearing.

Q. Did you, in fact, receive a telephone call from Mr. Rogers within a day or two after the hearing?

A. I did.

Q. And what was the substance of that call?

A. Mr. Rogers told me that the judge in New Orleans had turned these people loose. That is the substance of the call.

Q. Where were you when you received the call?

A. I received it at my office.

Q. At your office?

A. Yes, sir; in the Senate Office Building.

Q. Did you, subsequently, within a day or two, learn of a suit filed in the Federal District Court in New Orleans, seeking return of the various documents that had been seized by the local police and damages?

A. Yes, I subsequently did learn of such an action. And, of course, it was an action filed here which leads to this.

Q. But prior to this action, you had learned of the action filed in New Orleans; is that correct?

A. Now, I am not sure about that. I am not sure that I heard about the New Orleans action before I heard about this action. I may have.

Mr. Robb: Do you have the date when that was filed?

[fol. 57] Mr. Brener: It would have been filed on Sunday, actually, which would have been the 27th.

The Witness: I think I first learned of the action in Louisiana by reading it in the newspaper. And I am not sure whether I read that clipping before or after I learned of the action filed here which included me as a defendant.

Mr. Robb: You say that was filed on a Sunday?

Mr. Brener: Yes.

Mr. Robb: Do they file cases on Sunday down there?

Mr. Brener: That is what the rules say.

The Witness: I do not know. You say it was filed on the 29th, unless I misunderstood you. I do not think the 29th would have been a Sunday.

Mr. Brener: No, the 27th. If I said the 29th, I was in error. I said the 27th, I believe.

The Witness: I am sorry. I may have misunderstood you.

Mr. Robb: I have a photo copy of Civil Action No. 1397.

Mr. Brener: That is the one.

Mr. Robb: And the date of the summons is October 29, 1963.

Mr. Brener: It may be the date on the summons. I will simply make a statement on the record that according to the rules of our courts a document is filed when it is presented to the court.

Mr. Robb: What?

Mr. Brener: We submitted it to Judge Ainsworth.

Mr. Robb: I would like to get straight on this. That is all. That is the same suit you are talking about?

[fol. 58] Mr. Brener: The same number you just read, Mr. Robb.

By Mr. Brener:

Q. Did you learn on that Sunday, October 27, of a suit filed in the Federal District Court in New Orleans?

A. On that Sunday?

Q. On Sunday.

A. No, I do not think so.

Q. Were you made aware of a telegram sent to Senator Eastland, advising of a hearing on a request for a temporary restraining order to be held Monday, the 28th?

A. Yes, I heard from Senator Eastland about a telegram, but it did not advise of any suit filed.

Q. What did it advise?

A. It did not advise of any action pending.

Q. What did it advise?

A. Now, I have never seen that telegram, because Senator Eastland read it to me over the telephone, but as near as I can remember that telegram said about this: Federal Judge Ainsworth—it may have given his first name—is expecting you in his chambers at a named time, the 28th, to discuss a preliminary injunction, or words to that effect, signed by a Mr. Bender.

Mr. Brener: Brener.

The Witness: Brener.

Mr. Brener: I will state, for the record, I did not send that telegram to Senator Eastland. I did not direct it to go to Senator Eastland.

By Mr. Brener:

Q. Did he send a telegram requesting a restraining order?

A. No, the telegram did not say anything about a request for one. It was cryptic in that regard. It simply said, to my best recollection, what I have outlined, that [fol. 59] Ainsworth was expecting him, Judge Ainsworth expected him in his chambers to discuss a preliminary injunction matter.

It did not say whether it was pending, to be filed against whom, or advising what.

Mr. Robb: Do you have a copy of that?

Mr. Brener: I want to read it into the record and then I will let you see it.

The Witness: Am I pretty close?

By Mr. Brener:

Q. Does this wording sound familiar to you? "Federal Judge Robert Ainsworth has requested your presence in his office 9:30 a.m., October 28, to discuss an injunction enjoining turning over SCEF and Smith and Waltzer records to Senator Eastland."

Mr. Brener: Let the record show I am exhibiting a copy of what I have just read to the witness.

The Witness: This appears to be a copy of a telegram actually sent. It does not bear a Western Union stamp and I do not remember this phrase "enjoining turning over SCEF and Smith and Waltzer records to Senator Eastland."

This may have been read to me by Senator Eastland. He may have stopped reading when he got to the word "injunction." I do not know.

By Mr. Brener:

Q. What makes you think he stopped there?

A. Simply because I do not remember the rest of it. He may very well have read it and it may have passed my memory. In further response to your prior question, I still [fol. 60] do not see anything there that there is an injunction or that an action has been instituted.

Mr. Robb: Could we have that marked, please?

The Witness: Is that dated the 29th, too?

Mr. Brener: The 27th. I am marking this Plaintiffs' Exhibit 3 for identification.

(Plaintiffs' Exhibit No. 3 was marked for identification.)

By Mr. Brener:

Q. What was the nature of Senator Eastland's call to you when he read the text of a telegram?

A. Senator Eastland called me and said, "I have this telegram." I might say, sir, I am testifying now concern-

ing matters which normally would be within the attorney-client privilege, but in anticipation of questions about this, I asked Senator Eastland about it and he said he had no objection to my recounting it, and so I will do so. And then he read me a telegram, I guess he read it or closely paraphrased it.

He said, "I do not see how this thing is in any way binding on me." And I said, "Clearly, it is not. If this was a summons, it would be signed by the judge or an officer of the court."

And the Senator then instructed me to have the records which were in our possession in the custodianship of Colonel Burbank moved, started on their way, to Washington. We had some little discussion about the problem involved in getting transportation to get them up here.

We would have to hire a truck and it would be difficult to do it on this day. And the Senator said, "Well, get them started." He said, "Get them over to Woodville and, if necessary, you can leave them with the Chancery Clerk [fol. 61] there, and then have the Committee boys pick them up and take them on from there."

So that is the way we handled it. I dictated a wire, over the telephone, to Colonel Burbank, instructing him to have the records transported, or to transport them, or cause them to be transported, I forget the exact words, to Woodville, and that his responsibility would end when he turned them over to the Chancery Clerk at Woodville.

Q. Mr. Sourwine, I want to show you a document I have marked Exhibit—

A. I have not finished. May I finish?

Q. I am sorry.

A. I had previously tried to reach Colonel Burbank by telephone, unsuccessfully, and then I dictated this wire and I thereafter called Mr. Rogers and told him what I had instructed Colonel Burbank to do, and asked him if he could get in touch with Colonel Burbank and to let me have some word back from him or Burbank that the instructions would be complied with.

Now that is the sum total of what I did about it. Now, what is this? This appears to be a copy of the wire I dictated over the telephone. "By direction Chairman you are instructed—this says eructed—transport material you hold as custodian for subcommittee to Woodville, Mississippi, and there transfer custody to Chancery Clerk, at which moment your custody and responsibility will end. Chairman instructs thanks your fine cooperation."

And my name and title.

Mr. Brener: This is Plaintiffs' 4 for identification.

(Plaintiffs' Exhibit No. 4 was marked for identification.)

By Mr. Brener:

Q. Did Senator Eastland give you any idea as to why he changed his original instructions which called for pro-
[fol. 62] duction of the documents on the 29th?

A. That was not changed until afterward. After the subpoenas had been served and they had voluntarily turned all the material over to us, it became unnecessary, thereafter, to have a subpoena duces tecum enforced for the production of those documents in Washington on a particular day. And, thereafter, when it became inconvenient to hold a hearing on that day, the documents turned out to be as voluminous as we had expected, the evaluation is still proceeding within the Committee, the hearing on the 29th was cancelled and the parties were notified as to that.

Q. Why was the telegram sent at 11:43 at night, if that is a fact?

A. The telegram was sent with reasonable speed in doing the things I have told you, in the order I told you about them, I think. This is what happened. I got the call from Senator Eastland.

It was in the evening. It was fairly late in the evening. I tried to reach the Colonel by phone and could not do it. I dictated the telegram and then I called Rogers and that stopped it.

Now as to why I acted with this dispatch, it is my custom to act with all possible dispatch whenever I get a positive instruction from the Chairman. I have come to learn that is what he wants and that is what he gets.

Q. Was it your understanding that there was any connection between the request for injunction and the sudden removal of the documents from the State of Louisiana?

A. I did not know about a request for an injunction, sir, but certainly I had in my mind—and I imagine Senator Eastland had in his mind—the fact that if there was to be litigation about the documents, nobody should be dragged into it and involved in it except the Committee and the Committee personnel, and that the documents should be taken out of the possession of a custodian who held an official position with the State and might, because he wore [fol. 63] two hats, one as head of the State Police and one as custodian for us, become involved in an awkward situation.

Now I did not discuss this with Senator Eastland, but I admit that I did have that possibility in mind.

Q. Was it your understanding that the other members of the Internal Security Subcommittee knew of this proposed act for the sudden transfer of the documents?

A. No, it was not my understanding. It was not discussed with Senator Eastland at all. I doubt whether there was any communication between him and them. There may have been.

Q. Has this sequence of events that you have described been brought to the attention of the other members of the subcommittee?

A. I think it has been brought to the attention of all of the members of the subcommittee; yes, sir.

Q. Is it correct that the purpose of the removal of the documents was to put them beyond the jurisdiction of the Federal Judge in New Orleans?

A. This is correct. The Federal Judge would have had no jurisdiction under any circumstances. They were in the

possession of the United States and no Federal court would have had any jurisdiction over them at all.

Q. So this removal was not for that purpose?

A. No, not to my knowledge.

Q. Do you know when the documents were actually moved to Woodville?

A. No, I do not know. I have always assumed they started on their way within a few hours after I sent the telegram.

Q. At one o'clock in the morning?

A. Well, I do not know the particular time, but I received a telephone call from Mr. Rogers the following morning, or maybe it was from Mr. Alexander, I am not sure, one or the other, telling me that the documents were on their way and that fairly early in the morning.

I just assumed that they were moved right up.

[fol. 64] Q. We are talking about approximately 80 large cartons of documents, are we not?

A. We are talking about a truck load of documents; yes, sir.

Q. And you indicate that it would be normal for you to give such instructions at 11:40 at night for the removal of that quantity of documents?

A. Sir, my testimony is on the record. If you want to challenge it, you bring somebody that has some basis for challenging it. Do not sit here and impugn what I have told you as untrue.

Q. Is it normal precedure for you to give such instructions at 11:40 at night, even in the absence of any proposed litigation possibly affecting the documents?

A. That is a loaded question. I have told you that it is my policy and practice to implement Senator Eastland's instructions as speedily as I can. I do not think I have ever had an instruction from him in all the time I have served under him as Chairman that was not implemented as speedily as I could after he gave them to me.

And I have had instructions some times later than 11 o'clock at night. I have never gone to bed on an instruction

from the Chairman without doing everything I could to implement it before going to bed.

Q. Now you have been either Counsel or Assistant Counsel to this Committee since 1950 except for an 11-month period?

A. That is correct.

Q. I want to ask you whether or not his instructions to remove this to the Chancery Clerk of Mississippi impressed you as being odd or unusual or out of the ordinary insofar as routine procedures are concerned?

A. Well, you have several points there. Certainly it was out of the ordinary. It did not impress me as odd and my handling of the instructions was routine with me. I did it as speedily as I could, after I got the instructions.

• • • • • • •

[fol. 65] Q. One more question about the subpoenas that were issued on the 5th. Do you recall if you instructed the young lady who filled in the subpoenas to type in today's date, that is, the date on which they were typed, or whether they were to be back-dated?

A. I do not recall giving her any instructions at all about the date.

Q. You gave her no instructions at all?

A. I do not recall having given her any. I think if I did give her any, I said "today's date." I do not believe I gave her any instructions about the date. This girl is an experienced legal stenographer. You do not spell out everything.

Q. You told her the return date; is that correct?

A. I did.

Q. And you gave her the description of the documents that were being subpoenaed?

A. No, I did not say that. I said, "Take the description from the subpoenas," and I gave her a copy of the subpoenas that had been used in obtaining them for the police.

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Recross Examination,

By Mr. Hannon:

Q. Mr. Sourwine, let me ask one question, if I may. From the date October 5, including October 5, up to the present time, what has your position been?

A. Chief Counsel, Internal Security Subcommittee, United States Senate.

Q. And with respect to these questions Mr. Brener has been asking you this afternoon, were you at all times functioning in your official capacity as Chief Counsel of the Internal Security Subcommittee?

A. I was.

• • • • • • •

[fol. 66]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JAMES H. PFISTER (FILED AS EXHIBIT 1 TO DEFENDANTS' MOTION)

State of Louisiana,
Parish of Orleans, ss.:

Before me, the undersigned authority, duly qualified and commissioned in and for the Parish and State above written, personally came and appeared:

James H. Pfister who, having been duly sworn, did depose and say:

My name is James H. Pfister and I reside at 335 18th Street, New Orleans, Louisiana.

On December 5, 1959, I was elected to the House of Representatives of the Legislature of the State of Louisiana, and on the second Monday in May 1960, I was sworn into office and I am still serving in this capacity.

Representatives Tessier, A. D. Brown and I introduced and sponsored House Concurrent Resolution No. 13, at the Regular Session of the 1960 Legislature, the purpose of which Resolution was to establish the Joint Legislative Committee on Un-American Activities for Louisiana. This

Resolution was unanimously adopted by the House and the Senate and approved by Governor Jimmie H. Davis in July 1960. A copy of this Resolution is attached to this affidavit as Exhibit A.

Shortly after the Resolution was approved, and pursuant to the requirements of the Resolution, five Senators were appointed to the Joint Legislative Committee on Un-American Activities by the President of the Senate and in like fashion five members of the House of Representatives were appointed to the Committee by the Speaker of the House. I was elected Chairman of the Committee at the first meeting of the Committee and have served as Chairman ever since. Hereinafter, the Joint Legislative Committee on Un-American Activities for the State of Louisiana shall be referred to as the Joint Committee.

[fol. 67] Sometime during 1962 the Joint Committee became interested in the activities of the Southern Conference Educational Fund, Inc., the offices of which were located at 822 Perdido Street, New Orleans, Louisiana. This interest was stimulated in part by the knowledge of the Joint Committee of a report published in 1955 by the Internal Security Subcommittee of the United States Senate in which the Southern Conference Educational Fund, Inc. was found to be a communist front.

The Joint Committee instructed its Staff Director, Colonel Frederick B. Alexander, and its Committee Counsel, Jack N. Rogers, to have the Joint Committee staff conduct an investigation of the Southern Conference Educational Fund, Inc. (hereinafter called SCEF). Such an investigation was undertaken and as part thereof Mr. Rogers was authorized by the Joint Committee to go to Washington, D. C., to consult with the Internal Security Subcommittee of the United States Senate.

Sometime during September of 1963 at a meeting of the Joint Committee, Colonel Alexander and Mr. Rogers informed the Joint Committee of the facts relating to SCEF uncovered by the staff investigation up to that point. Mr. Rogers expressed the opinion that the operations of SCEF

were in violation of Louisiana criminal statutes relating to subversive activities. The Joint Committee concurred in this opinion and instructed Mr. Rogers and the Staff Director to take the matter up with the Louisiana State police authorities.

On the night of October 4, 1963, pursuant to a telephone call I received from Mr. Rogers, I went to the New Orleans Police Academy, New Orleans, Louisiana, where I met Mr. Rogers. Mr. Rogers informed me at this time that the police authorities had seized the books, records and documents of SCEF and he described the nature of some of the documents to me. I thereupon authorized Mr. Rogers to serve a subpoena upon the appropriate authority to require [fol. 68] the production before the Joint Committee of all books, records and documents seized from SCEF.

On the following day, October 5, 1963, Mr. J. G. Sourwine of the Internal Security Subcommittee of the United States Senate served United States Senate subpoenas on Mr. Rogers, Colonel Alexander and me requiring the production of the same books, records and documents of SCEF before his subcommittee. Access to the books, records and documents was allowed us between October 5 and October 27, 1963, pending their transportation to Washington, D. C., pursuant to Mr. Sourwine's subpoenas.

The Joint Committee held a hearing involving SCEF on November 8, 1963, at which time copies of many of the documents seized from SCEF were introduced into evidence. Upon the basis of the evidence produced, the Joint Committee resolved as a legislative finding that SCEF was a communist front and a subversive organization, aiding and abetting the communist conspiracy.

I do not know Senator James O. Eastland nor have I ever met him. I have never communicated with him or contacted him in any way either directly or indirectly. Nor have I ever had anything to do with Mr. J. G. Sourwine except on October 5, 1963, when he served a subpoena upon me. This was my first and only meeting with Mr. Sourwine and the only time I ever spoke to him. Finally, I

wine ever had anything to do with determinations made by wine ever had anything to do with de terminations made by me or by the Joint Committee regarding what action should be taken concerning SCEF, its personnel, and its records.

James H. Pfister

Subscribed and sworn to before me, a notary public, at New Orleans, Louisiana, this 4th day of January, 1964.

.....

Notary Public.

[fol. 69]

EXHIBIT A, ANNEXED TO FOREGOING AFFIDAVIT

By: MESSRS. PFISTER
TESSIER and
A. D. BROWN

HOUSE CONCURRENT RESOLUTION No. 13
Regular Session, 1960
A Concurrent Resolution

WHEREAS, this state and this country face grave public danger from enemies both within and without our boundaries, and

WHEREAS, these subversive groups and persons under the color of protection afforded by the Bill of Rights of the United States Constitution seek to destroy us and the ideals for which we fought to preserve and subject us to the domination of foreign powers and ideologies, and

WHEREAS, Louisiana, as one of the laboratories of this great country, may study profitably this problem within its boundaries and enact remedial legislation if facts therefor are made available, and

WHEREAS, necessary and desirable legislation to meet this grave problem and to assist local enforcement officers to be effective must be based on a thorough and impartial

investigation by a competent and active legislative committee.

THEREFORE, BE IT RESOLVED by the House of Representatives of the Legislature of the State of Louisiana, the Senate concurring therein, that there is hereby created the Joint Legislative Committee on Un-American Activities which Committee shall consist of ten members, five to be appointed by the Speaker of the House of Representatives [fol. 70] from the membership of the House and five to be appointed by the President of the Senate from the membership of the Senate which committee shall study, investigate and analyze all facts relating directly or indirectly to the subject expressed in the recitals of this resolution; to the activities of groups and organizations which have as their objectives, or as part of their objectives, the overthrow of the State of Louisiana, or of the United States by force, violence or other unlawful means; to all organizations known to be or suspected of being dominated or controlled by a power seeking to impose a foreign political theory upon the government and people of the United States; to all persons who belong to or are affiliated with such groups or organizations; and to the manner and extent in which such activities affect the safety, welfare and security of this state in National Defense, the functioning of any state agency, unemployment relief and other forms of public assistance, educational institutions in this state including but not limited to the operation, effect, administration, enforcement and needed revision of any and all laws in any way bearing upon or relating to the subject of this resolution.

BE IT FURTHER RESOLVED that the Committee shall have the authority to:

(a) Select a chairman and a vice chairman from its membership; and to employ and fix the compensation of a secretary and such clerical, investigative, expert and technical assistants as it may deem necessary.

(b) Contact and deal with such other agencies, public or private, as it may deem necessary for the rendition and affording of such services, facilities, studies and reports as will best enable the committee to carry out the purposes for which it is created.

[fol. 71] (c) Cooperate with and secure the cooperation of parish, city, city and parish, and other local law enforcement agencies in investigating any matter within the scope of this resolution,

(d) Cooperate with and meet with similar committees of other states and of the Federal Government, or representative thereof, outside of this state, and expenses necessarily incurred in connection therewith by any of the members or staff of the committee, thereunto duly authorized by the chairman, shall constitute a proper charge against the sums allocated to the committee,

(e) Do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish

(f) Adopt and from time to time amend such rules the objects and purposes of this resolution, and governing its procedure as may appear appropriate.

Be It Further Resolved that every department, commission, board, agency, officer and employee of the State Government of Louisiana and of any political subdivision, parish, city or public district of or in this state, shall furnish the committee and any subcommittee, upon request, any such information, records and documents as the Committee or subcommittee deems proper for the accomplishment of the purposes for which the committee is created; provided, however, that this provision shall not extend to, nor shall it be construed to make available to the committee or any subcommittee thereof, any record or other document excluded from the application of the Public Records Act,

as found in Part I of Chapter I of Title 44 of the Louisiana Revised Statutes of 1950, or any other record or document which under the law is made a confidential record.

[fol. 72] BE IT FURTHER RESOLVED that the committee shall have the power and authority to hold hearings at any place in Louisiana, which meetings may be public or private, to subpoena witnesses, administer oaths, require the production of books and records pertinent to any inquiry before the Committee and to do all other things necessary to accomplish the purposes of this resolution.

BE IT FURTHER RESOLVED that the Committees shall have authority to apply to any court of competent jurisdiction for enforcement of any order issued by it for the production of books, records or other documents or to compel the attendance of any witnesses subpoenaed to appear before it and, upon request of the commission, the Attorney General shall prosecute any witness who is guilty of refusal to testify or who gives false testimony, and persons guilty of false swearing or of giving false testimony shall be punished in accordance with the criminal laws of this state relating to false swearing or perjury, as the case may be, and

BE IT FURTHER RESOLVED that the committee shall submit its findings and recommendations to the Legislature at each of its regular sessions and at such other times as the committee may deem necessary and desirable.

BE IT FURTHER RESOLVED that the members of the committee created herein shall serve without compensation but shall receive the same per diem and travel allowance in the performance of their duties as is provided for members of the Legislature.

BE IT FURTHER RESOLVED that the per diem and travel allowance herein authorized and all other expenses incurred by the committee shall be paid out of funds available to the presiding officers of the two houses of the Louisiana Legis-

lature for expenses of the Legislature and Interim Committees; provided, however, that the disbursements for all expenses incurred by the committee, including the payment [fol. 73] of per diem and travel allowances for members as herein authorized shall be approved by the chairman of the committee.

.....

Speaker of The House of Representatives

.....

Lieutenant Governor and President of The Senate

Approved: .....

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JACK N. ROGERS (FILED AS EXHIBIT 2 TO DEFENDANTS' MOTION)

State of Louisiana,
Parish of East Baton Rouge, ss.:

Before Me, the undersigned authority personally came and appeared: Jack N. Rogers, who, after first being duly sworn, did depose and say:

I am a member of the bar of the State of Louisiana and of the Supreme Court of the United States. I am engaged in the general practice of law in Baton Rouge, Louisiana. My home address is 1213 Knollwood Drive, Baton Rouge, Louisiana, and my office address is 840 Commerce Building, Baton Rouge, Louisiana. Since March, 1961, I have been counsel for the Joint Legislative Committee On Un-American Activities of the Legislature of the State of Louisiana, hereinafter referred to as the Joint Committee.

The Joint Committee was created by House Concurrent Resolution No. 13, Regular Session, 1960, of the Louisiana

Legislature, hereinafter referred to as Resolution No. 13. That resolution provided in part:

"WHEREAS, this state and this country face grave public danger from enemies both within and without our boundaries, and

[fol. 74] WHEREAS, these subversive groups and persons under the color of protection afforded by the Bill of Rights of the United States Constitution seek to destroy us and the ideals for which we fought to preserve and subject us to the domination of foreign powers and ideologies, and

WHEREAS, Louisiana, as one of the laboratories of this great country, may study profitably this problem within its boundaries and enact remedial legislation if facts therefor are made available, and

WHEREAS, necessary and desirable legislation to meet this grave problem and to assist local enforcement officers to be effective must be based on a thorough and impartial investigation by a competent and active legislative committee.

THEREFORE, BE IT RESOLVED by the House of Representatives of the Legislature of the State of Louisiana, the Senate concurring therein, that there is hereby created the Joint Legislative Committee on Un-American Activities which Committee shall consist of ten members, five to be appointed by the Speaker of the House of Representatives from the membership of the House and five to be appointed by the President of the Senate from the membership of the Senate which committee shall study, investigate and analyze all facts relating directly or indirectly to the subject expressed in the recitals of this resolution; to the activities of groups and organizations which have as their objectives, or as part of their objective, the overthrow of the State of Louisiana, or

of the United States by force, violence or other unlawful means; to all organizations known to be or suspected of being dominated or controlled by a power seeking to impose a foreign political theory upon [fol. 75] the government and people of the United States; to all persons who belong to or are affiliated with such groups or organizations; and to the manner and extent in which such activities affect the safety, welfare and security of this state in National Defense, the functioning of any state agency, unemployment relief and other forms of public assistance, educational institutions in this state including but not limited to the operation, effect, administration, enforcement and needed revision of any and all laws in any way bearing upon or relating to the subject of this resolution.

Be It Further Resolved that the Committee shall have the authority to:

(a) Select a chairman and a vice chairman from its membership; and to employ and fix the compensation of a secretary and such clerical, investigative, expert and technical assistants as it may deem necessary.

(b) Contact and deal with such other agencies, public or private, as it may deem necessary for the rendition and affording of such services, facilities, studies and reports as will best enable the committee to carry out the purposes for which it is created.

(c) Cooperate with and secure the cooperation of parish, city, city and parish, and other local law enforcement agencies in investigating any matter within the scope of this resolution.

(d) Cooperate with and meet with similar committees of other states and of the Federal Government, or representative thereof, outside of this state,

and expenses necessarily incurred in connection therewith by any of the members or staff of the committee, thereunto duly authorized by the chairman, [fol. 76] shall constitute a proper charge against the sums allocated to the committee."

Since the creation of the Joint Committee, and in carrying out its functions and purposes under the foregoing Resolution No. 13, it has studied, investigated, and analyzed the facts relative to a number of known or suspected subversive organizations operating in the State of Louisiana. Among such organizations which have been scrutinized by the Joint Committee is Southern Conference Educational Fund, Inc., hereinafter referred to as the SCEF. The offices of the SCEF were and are located at 822 Perdido Street, New Orleans, Louisiana. The Joint Committee's interest in the SCEF arose out of the fact that in 1954 the SCEF was found by the Internal Security Sub-Committee of the United States Senate after investigation, to be a communist front organization. The activities and purposes of SCEF have continued unchanged since 1954. Investigation by the Joint Committee prior to October 1963 disclosed that the direction and control of the SCEF and its publication, The Southern Patriot, were in the hands of persons who had at various times been identified by witnesses under oath as Communists. Among such persons were James A. Dombrowski, Executive Director of the SCEF; Aubrey Williams, President Emeritus; Carl Braden, Field Organizer and formerly Field Secretary of the SCEF and Editor of the Southern Patriot; Ann Braden, Editor, the Southern Patriot and formerly Field Secretary and Editor; and William Howard Melish, Eastern Representative (fund raiser) of the SCEF; Benjamin E. Smith, Treasurer of the SCEF, was also a national board member of The National Lawyers Guild, an identified communist front organization. Certain other officers or former officers of the SCEF had also been identified as communists.

In carrying out my duties as counsel to the Joint Committee pursuant to Resolution No. 13, I requested the In-
[fol. 77] ternal Security Sub-Committee of the United States Senate to furnish me with such information as that sub-committee could properly give with respect to the SCEF. I made this request on or about July 17, 1963, of Mr. J. G. Sourwine, counsel of the Senate Sub-Committee. Mr. Sourwine did furnish me certain relevant and helpful information from the public records of his committee. I suggested to Mr. Sourwine that at some future time our Joint Committee might subpoena the records of the SCEF, and that if we did so, and if any material relevant to the responsibilities of his committee should be obtained, I would promptly let him know.

Around the middle of September, 1963, according to my best recollection, as to the time, I telephoned to Mr. Sourwine and asked him whether, in the event that the Joint Committee subpoenaed the records of the SCEF, he and Ben Mandel, a member of his staff, could help us to evaluate the material. My request for this assistance was prompted by the fact that I knew Mr. Sourwine and Mr. Mandel were experts in the field of subversive organizations and activities.

Pursuant to the Joint Committee's authority under Resolution No. 13, the staff of the Joint Committee also examined the files of the Louisiana State Police and of other Louisiana police agencies relative to the SCEF.

Having considered and analyzed the material and information that had been collected respecting the SCEF and its activities, I concluded, and so advised the Joint Committee, that the operations of the SCEF were in violation of the Louisiana criminal statutes dealing with subversive activities. The Joint Committee concurred in this conclusion, and directed me to take the matter up with the Louisiana State Police. Accordingly, on or about September 20, 1963, I went to Colonel Thomas D. Burbank, Superintendent, Louisiana State Police, presented the facts of the

matter to him, and requested that he have the State Police [fol. 78] obtain and execute search warrants for the offices of the SCEF and the premises occupied by James A. Dombrowski and certain other officers of the SCEF. Colonel Burbank, thereupon designated Major Russell R. Willie as the officer to be in charge of the matter. I offered to assist the police in obtaining the warrants, and my offer was accepted.

On October 2, 1963, Major Willie and I appeared before the Honorable Thomas M. Brahney, Jr., Judge, Criminal District Court, Parish of Orleans. At this time Major Willie swore to applications for search warrants for the offices of the SCEF, and the residences of James A. Dombrowski, Benjamin E. Smith and Bruce C. Waltzer, Major Willie and I at the same time swore to applications for arrest warrants for Dombrowski and the other two. Being satisfied that probable cause existed, Judge Brahney signed and issued the warrants.

The warrants were executed by Louisiana State Police and New Orleans Police, all of whom were under the direction and supervision of Major Willie, on October 4, 1963, by the seizure of the materials described in the search warrants and the arrest of the persons named in the arrest warrants. Execution of the warrants was pursuant to the commands set forth therein.

Shortly after the execution of all of the warrants, and after a preliminary examination of the seized material by me, I served on Major Willie a subpoena duces tecum requiring the forthwith production of all of the seized material before the Joint Committee. At my direction Major Willie then transported the material to Baton Rouge, where it was held by the State Police as custodians for the Joint Committee.

At about 10:30 P. M. on October 4, 1963, after my return from New Orleans to Baton Rouge, I telephoned Mr. Sourwine at his home. I told him that it was plain to me that the SCEF material obtained by the Joint Committee would

[fol. 79] be of substantial interest to his sub-committee, and I urged that he and Mr. Mandel come to Baton Rouge to examine it as soon as possible. He indicated that they would try to be in Baton Rouge the next day, October 5, and they did arrive the next day.

After Mr. Sourwine and Mr. Mandel made some examination of the seized material, Mr. Sourwine prepared and served subpoenas upon me, the chairman, and the staff director of the Joint Committee, requiring the production of the material before the Internal Security Sub-Committee of the Judiciary Committee of the United States Senate. The subpoenas were typed on October 5, 1963, by Mrs. Laura Nicholson, an employee of the Joint Committee, at the Committee offices in the Old Capitol Building. At the same time Mr. Sourwine also had Mrs. Nicholson type several letters to Colonel Burbank, designating Colonel Burbank as custodian of the material for the Senate Internal Security Sub-Committee, and authorizing access to such material by representatives of the Louisiana Joint Committee.

Between October 5, 1963 and October 27, 1963, the staff of the Joint Committee examined, studied and copied a substantial amount of the seized material. We were assisted in this work for two days by Mr. Mandel. It may be said parenthetically that on November 8, 1963, the Joint Committee held a hearing in the SCEF matter, at which time copies of many of the seized documents were introduced in evidence. On the same day, and on the basis of the evidence produced, the Joint Committee resolved, as a legislative finding, that the Southern Conference Educational Fund, Inc., was a Communist front organization, and also a subversive organization, aiding and abetting the Communist conspiracy. A full report of this hearing was published by the Joint Committee on November 19, 1963.

[fol. 80] On October 27, 1963, at about 10 o'clock P. M., Baton Rouge time, Mr. Sourwine telephoned to me that he had been trying unsuccessfully to reach Colonel Burbank. He asked me to give Colonel Burbank Senator Eastland's

instructions to move all the SCEF material to Woodville, Mississippi immediately; he said that a telegram containing such instructions to Colonel Burbank would follow. I promptly conveyed Senator Eastland's instructions to Colonel Burbank, and the materials were sent to Woodville the next morning.

Senator Eastland and Mr. Sourwine had nothing whatever to do with the seizure of the SCEF material by the Louisiana Police or the acquisition of such material by the Joint Committee. Their only connection with the entire matter was as set forth in this affidavit. Finally, I wish to make it entirely clear that at no time did I inform either Senator Eastland or Mr. Sourwine of the decision to proceed against the SCEF and its officers by way of arrest and search warrants rather than by way of subpoena.

Jack N. Rogers

Sworn to and subscribed before, Notary, at Baton Rouge, Louisiana, this 25th day of January, 1964.

Steve A. Mitool Jr., Notary Public.

[fol. 81]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF THOMAS D. BURBANK (FILED AS EXHIBIT 3 TO DEFENDANTS' MOTION)

State of Louisiana,
Parish of East Baton Rouge, ss.:

Before me, the undersigned authority, duly qualified and commissioned in and for the Parish and State above written, personally came and appeared: Thomas D. Burbank, who, having been duly sworn, did depose and say:

That he is the duly appointed Director of Public Safety and Superintendent of State Police of the State of Louisiana, having been appointed by Honorable Jimmie H. Davis, Governor of Louisiana, on January 3, 1962, which appoint-

ment was confirmed by the Senate of the State of Louisiana. He has been an officer of the Louisiana State Police since 1941, when he was appointed a trooper. He graduated from the National Police Academy of the Federal Bureau of Investigation in 1954.

That prior to October 4, 1963, in his official capacity as head of the Department of Public Safety and the Division of State Police, affiant was informed by Jack N. Rogers, Chief Counsel for the Joint Legislative Committee on Un-American Activities of the Legislature of Louisiana, and Major Russell R. Willie, of activities being carried on by James A. Dombrowski and the Southern Conference Educational Fund, Inc., in New Orleans, Orleans Parish, Louisiana, as well as by Benjamin E. Smith and Bruce Waltzer, in violation of statutes of the State of Louisiana, particularly R. S. 14:358 et seq., and R. S. 14:390 et seq., which relate to communist and other subversive activities.

That on or about September 20, 1963, a request was made of affiant by Jack N. Rogers, on behalf of the Joint Legislative Committee on Un-American Activities and pursuant to House Concurrent Resolution No. 13, Regular Session, 1960, to have the Louisiana State Police conduct a search of the premises being used by the aforenamed individuals [fol. 82] and organization in violation of Louisiana's communist and subversive activities laws. Acting in his official capacity as Director of Public Safety and Superintendent of State Police, affiant designated Major Russell R. Willie as the State Police officer in charge of all police efforts to be undertaken by the department in this matter. Major Willie was and still is in charge of the Department's Bureau of Identification and Investigation.

The actions taken by affiant's subordinates on October 4, 1963, in arresting James A. Dombrowski and some of his associates and searching the premises of the Southern Conference Educational Fund, Inc., and James A. Dombrowski and his automobile were carried out pursuant to the directions contained in arrest and search warrants issued by Judge Thomas M. Brahney, Jr., on October 2, 1963.

That at no time did affiant enter into any plan or agreement under the color of State laws and statutes to deprive James A. Dombrowski or any other person of any rights, privileges and immunities granted to them as citizens of the United States of America by the laws and constitution of the United States, but rather he at all times conducted himself in his official capacity as a police officer whose duty it is to enforce the laws of the State of Louisiana and the United States of America and to uphold the constitutions of the State of Louisiana and the United States of America.

That affiant at no time authorized or instructed any of the State Police under his command to engage in any illegal activities. He at no time acted in an individual capacity in the matter of James A. Dombrowski and the Southern Conference Educational Fund, Inc., Benjamin E. Smith and Bruce Waltzer, but always acted in his official capacity as Director of Public Safety and Superintendent of State Police.

That affiant personally took no part in the searches and arrests made on October 4, 1963, in the City of New Orleans [fol. 83] involving the premises and persons of James A. Dombrowski, Benjamin E. Smith and Bruce Waltzer, and the premises of the Southern Conference Educational Fund, Inc.

That the documents seized on October 4, 1963, from the offices, residence and automobile of James A. Dombrowski and the Southern Conference Educational Fund, Inc., and Benjamin E. Smith and Bruce Waltzer, having been subpoenaed by the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature on October 4, 1963, were delivered to the headquarters of the Louisiana State Police by the Joint Legislative Committee on Un-American Activities for storage and safekeeping. That on October 5, 1963, the documents having been subpoenaed by the Internal Security Sub-Committee of the United States Senate, affiant was appointed temporary custodian of the documents by direction of the Chairman of the Internal Security Sub-Committee of the United States Senate.

That affiant, acting purely as custodian for said Sub-Committee of the United States Senate, did retain custody of all documents seized on October 4, 1963, until October 28, 1963, when by direction of Mr. J. G. Sourwine, representative of the Internal Security Sub-Commfttee of the United States Senate, he delivered them to Honorable J. Y. Chapman, Clerk of the Chancery Court, Wilkinson County, Woodville, Mississippi, and received his receipt therefor.

That affiant never had any communication, directly or indirectly, with Senator James O. Eastland or the Honorable J. G. Sourwine with respect to any action contemplated or proposed to be taken by the Louisiana State Police or the Louisiana Joint Legislative Committee in the matter of the Southern Conference Educational Fund, Inc., or James A. Dombrowski and his associates engaged in the operation, control and management of the Southern Conference Educational Fund, Inc. Nor has there ever [fol. 84] been any agreement or concert of action, direct or indirect, between affiant and Senator Eastland or Mr. Sourwine with respect to any proposed or contemplated action by the Louisiana authorities involving the Southern Conference Education Fund, Ind., Dombrowski and his associates either jointly or severally.

Thomas D. Burbank, Director of Public Safety, State of Louisiana.

Sworn to and subscribed before me at Baton Rouge, Louisiana, this 3rd day of January, 1964.

Jack N. Rogers, Notary Public.

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF RUSSELL R. WILLIE (FILED AS EXHIBIT 4 TO DEFENDANTS' MOTION)

State of Louisiana,
Parish of East Baton Rouge, ss.:

Before Me, the undersigned authority, duly qualified and commissioned in and for the Parish and State above written, personally came and appeared Russell R. Willie, who, having been duly sworn, did depose and say:

That he is employed by the Department of Public Safety, Division of State Police, State of Louisiana, in the capacity of Major at the State Police Headquarters, Foster Drive, Baton Rouge, Louisiana. That affiant has been employed by the Department of Public Safety in various capacities as a State policeman for a period in excess of twenty-one years.

[fol. 85] That his primary duty as a Major of the Louisiana State Police is now and was in October 1963, to act as supervisor of the Bureau of Identification of that governmental agency; that among the various functions performed by said Bureau are the maintenance of fingerprint records forwarded to the Department by various law enforcement agencies throughout the State of Louisiana and the United States, the receipt and classification of all material dealing with known and suspected subversive organizations as well as individuals known to belong to or associate with said organizations. In addition, according to Louisiana state law all communists in the State of Louisiana and all individuals there who are knowingly members of a communist front organization as defined in the statute are required to register with the Department of Public Safety, and such registration is under the affiant's immediate supervision.

That in his official capacity as a State Police officer and in company with Jack N. Rogers, Esq., counsel for the Joint Legislative Committee on Un-American Activities of the

Louisiana Legislature, affiant on October 2, 1963, went to the Criminal District Court in New Orleans, Louisiana, and made application to Honorable Thomas M. Brahney, Jr., Judge of Section "D" Criminal District Court, Parish of Orleans, State of Louisiana, for certain search warrants and arrest warrants. These applications, which were sworn to by affiant on October 2, 1963, in the presence of Judge Brahney, were for warrants to search the premises occupied by the Southern Conference Educational Fund, Inc., the home and automobile of James A. Dombrowski, as well as other residences occupied by persons involved in the management and control of the Southern Conference Educational Fund, Inc. In addition and at the same time applications for the arrest of James A. Dombrowski, Bruce C. Waltzer and Benjamin E. Smith were sworn to by affiant [fol. 86] and Jack N. Rogers, Esq., in the presence of Judge Brahney. Based upon such sworn applications Judge Brahney held that probable cause existed for the issuance of the search warrants and warrants of arrest and he thereupon signed and issued them.

That the aforesaid search warrants and warrants of arrest were executed by the affiant and other police officers under his command acting in their official capacities, on October 4, 1963, by the arrest of James A. Dombrowski and others and the seizure of the books, records and files belonging to or identified with James A. Dombrowski and the management and control of the Southern Conference Educational Fund, Inc.

That shortly after the seizure of the books, records and files above described the State of Louisiana Joint Legislative Committee on Un-American Activities through its chairman, James H. Pfister, by subpoena served upon affiant, commanded affiant forthwith to deliver to said committee at New Orleans, Louisiana, all of the books, records and files of the Southern Conference Educational Fund, Inc., and of James A. Dombrowski, plus all communist political propaganda and communist party records, plus any other documentary evidence of subversive activities

then in affiant's possession or legal custody as a result of the aforesaid seizures. Affiant did then and there make delivery of the seized material to Mr. Jack N. Rogers, counsel for the Committee, and Colonel Frederick B. Alexander, Staff Director, pursuant to the subpoena issued by the Legislature of the State of Louisiana through the Joint Legislative Committee on Un-American Activities and duly served on affiant.

Affiant further states that subsequent to the delivery of the seized material to the Joint Legislative Committee on Un-American Activities, to wit, on October 5, 1963, subpoenas were issued by Senator James O. Eastland, Chairman, Committee on Judiciary and Sub-Committee on In- [fol. 87] ternal Security of the Congress of the United States, directed to James H. Pfister, Chairman, Jack N. Rogers, Counsel, and Colonel Frederick B. Alexander, Jr., Staff Director of the Joint Legislative Committee on Un-American Activities, State of Louisiana, commanding the individuals named to deliver to said Committee of the United States Congress all documents, books, letters, papers, etc., seized on October 4, 1963, from James A. Dombrowski and Southern Conference Educational Fund, Inc. In compliance with said subpoenas all materials then in custody of the Louisiana Joint Legislative Committee on Un-American Activities were delivered on October 5, 1963, to the custody of the Honorable J. G. Sourwine, Chief Counsel, Internal Security Sub-Committee of the United States Senate.

Affiant has never met Senator James O. Eastland nor has he had any communication with him directly or indirectly at any time, nor had he ever met Mr. J. G. Sourwine or communicated with him directly or indirectly until October 5, 1963, when the subpoenas of the Senate Internal Security Sub-Committee were served on Mr. Pfister, Mr. Rogers and Colonel Alexander. Neither Senator Eastland nor Mr. Sourwine had anything whatever to do with the aforesaid applications for search warrants and arrest warrants or with the execution of such warrants. Neither of

them consulted with affiant in advance of the applications for the warrants or the execution thereof, nor did they participate in any way in the determination by the Louisiana authorities to obtain and execute such warrants.

Affiant specifically states that at no time did he ever agree, plan or act in concert with Senator Eastland or Mr. Sourwine to seize the books, records and papers of the Southern Conference Educational Fund, Inc., and James A. Dombrowski in order that they might thereafter be obtained by the Internal Security Sub-Committee of the [fol. 88] United States Senate by way of subpoenas of that Committee.

Russell R. Willie, Major, Louisiana State Police.

Sworn to and Subscribed before me at Baton Rouge, Louisiana, this 3rd day of January, 1964.

Jack N. Rogers, Notary Public.

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF MRS. LAURA NICHOLSON (FILED AS EXHIBIT 5 TO DEFENDANTS' MOTION)

State of Louisiana,
Parish of East Baton Rouge, ss.:

Before me, the undersigned authority, personally came and appeared: Mrs. Laura Nicholson, who, having been duly sworn, did depose and say: I am an employee of the Joint Legislative Committee on Un-American Activities of the Louisiana State Legislature, and more particularly, employed as secretary to Colonel Frederick B. Alexander, Jr., Staff Director of that Committee. I have been so employed since December 1, 1962. My office address is Room 214, Old State Capitol Building, Baton Rouge, Louisiana.

On the afternoon of Saturday, October 5, 1963, our office was officially closed and I was at home when I received a call from Jack N. Rogers, Esq., Counsel to the Joint Legis-

lative Committee on Un-American Activities. Mr. Rogers asked me if I could come down to the office at Room 214, Old State Capitol Building, Baton Rouge, Louisiana, and do some special work, and I said I would. I thereupon went to the office of the Committee, and when I arrived Mr. Rogers and a gentleman who was introduced to me as Mr. J. G. Sourwine were there. Mr. Sourwine produced several [fol. 89] blank subpoenas bearing the signature of Senator James O. Eastland, Chairman of the Committee on the Judiciary and Sub-Committee on Internal Security, United States Senate. Mr. Sourwine handed me the United States Senate blank subpoenas bearing Senator James O. Eastland's signature and asked me to fill them in so that they would call for the production of the same records that were covered by subpoenas of the Joint Legislative Committee on Un-American Activities of the Louisiana State Legislature, which subpoenas I understand had been served upon Major Russell R. Willie of the Louisiana State Police on the preceding day, October 4, 1963. Mr. Sourwine dictated the names of the individuals to whom his subpoenas were to be directed and the other words that were to be filled in on the United States Senate subpoenas down to the description of the records which were to be covered by those subpoenas. He thereupon told me to take these descriptions from the subpoenas of the Louisiana State Committee dated October 4, 1963. This I did. I also filled in the date at the bottom of each Senate subpoena. I typed the date as the "4th day of October," 1963, taking this date also from the date of the Louisiana State subpoenas. Although I inserted the date in the Senate subpoenas as the "4th day of October," 1963, the fact of the matter is that I typed these subpoenas, including the dates thereon, on Saturday, the 5th day of October, 1963. On that same occasion I also typed several letters from Mr. Sourwine to Colonel Tom Burbank, Commanding Officer of the Louisiana State Police. These letters related to the arrangement whereby Colonel Burbank was to act for the United States

Senate Committee as custodian of the records covered by that Committee's subpoenas. These letters were all dated October 5, 1963, the date when they were typed. These letters referred to the Senate Committee's subpoenas of "Oc-
[fol. 90] tober 4, 1963," but here again those subpoenas were in fact typed by me on October 5, 1963.

Mrs. Laura Nicholson.

Sworn to and subscribed before me at Baton Rouge, Louisiana, this 3rd day of January, 1964.

Jack N. Rogers, Notary Public.

IN UNITED STATES DISTRICT COURT

STATEMENT OF MATERIAL FACTS PURSUANT TO LOCAL RULE 9(h)

The material facts involved in this action are set forth in the affidavits filed as part of this motion. For purposes of the motion, the material facts will be summarized in paragraphs 3, *et seq.* hereof.

1. Plaintiff James A. Dombrowski is a resident of the State of Louisiana and a citizen of the United States.[1]

2. Plaintiff Southern Conference Educational Fund, Inc. is a corporation which maintains an office for business purposes in the State of Louisiana.[2] A report of the Senate Internal Security Subcommittee published in 1955 disclosed that the Southern Conference Educational Fund, Inc. was the successor to the Southern Conference for Human Welfare, a communist-front organization.

3. The defendant James O. Eastland is a United States Senator from Mississippi and Chairman of the Committee

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[1] Complaint, p. 1.

[2] Complaint, p. 1.

[fol. 91] on the Judiciary of the United States Senate and of the Subcommittee on Internal Security.[3]

4. The defendant J. G. Sourwine is Chief Counsel of the Subcommittee on Internal Security of the Committee on the Judiciary of the United States Senate.[4]

5. The other persons and parties named as defendants in this cause have not been served with process within the District of Columbia and therefore are not within the jurisdiction of this Court.[5]

6. James H. Pfister is a member of the House of Representatives of the Legislature of the State of Louisiana and has been Chairman of the Joint Legislative Committee on Un-American Activities for the State of Louisiana.[6]

7. The Joint Legislative Committee on Un-American Activities, which shall hereinafter be referred to as the "Joint Committee," was constituted by House Concurrent Resolution No. 13 of the 1960 Legislature. This resolution was unanimously adopted by the House of Representatives and by the Senate of Louisiana and was approved by Governor Jimmie H. Davis in July, 1960.[7]

8. House Concurrent Resolution No. 13,[8] requires, inter alia, that the Joint Committee "shall study, investigate and [fol. 92] analyze all facts relating directly or indirectly * * * to the activities of groups and organizations which have as their objectives, or as part of their objectives, the overthrow of the State of Louisiana, or of the United States by force, violence or other unlawful means; to all

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[3] Exhibit 6, p. 1.

[4] Exhibit 7, p. 1.

[5] Court record.

[6] Exhibit 1, pp. 1 and 2.

[7] Exhibit 1, p. 1.

[8] A copy of this resolution is Exhibit A to the affidavit of Representative Pfister.

organizations known to be or suspected of being dominated or controlled by a power seeking to impose a foreign political theory upon the government and people of the United States; to all persons who belong to or are affiliated with such groups or organizations; * * * *."

9. The Resolution, which recognizes the necessity and desirability of legislation to meet the foregoing problems, also authorized the Joint Committee to co-operate with local law enforcement authorities and similar committees of other States and of the Federal Government.[9]

10. Jack N. Rogers became counsel for the Joint Committee in March of 1961 and both he and Representative Pfister have served with the Joint Committee in their respective capacities from the date of entering into their respective offices continuously up to and including the date of the filing of this motion.[10]

11. Some time during 1962 the Joint Committee became interested in the activities of the Southern Conference Educational Fund, Inc. This organization, which hereinafter shall be referred to as SCEF, was at that time and is now located at 822 Perdido Street, New Orleans, Louisiana.[11]

12. The Joint Committee's interest in SCEF arose out of the fact that the Committee knew of the report published [fol. 93] in 1955 by the Internal Security Subcommittee of the United States Senate in which SCEF was found to be a communist front.[12]

13. In carrying out its legislative responsibilities, the Joint Committee instructed its Staff Director, Colonel Frederick B. Alexander and its Committee Counsel, Jack

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[9] *Id.;* fourth Whereas clause; paragraph (c) and paragraph (d).

[10] Exhibit 2, p. 1; Exhibit 1, p. 2.

[11] Exhibit 1, p. 2; Exhibit 2, p. 3.

[12] Exhibit 1, p. 2; Exhibit 2, p. 3; also see Exhibit 7, pp. 2 and 3.

N. Rogers, to have the Committee staff conduct an investigation of SCEF as required by House Concurrent Resolution No. 13.[13]

14. The investigation was undertaken and, as part thereof, Mr. Rogers was authorized by the Joint Committee to go to Washington, D. C. to consult with the Internal Security Subcommittee of the United States Senate in matters bearing upon the mutual responsibilities of the two committees.[14]

15. The investigation conducted by the staff of the Joint Committee prior to October, 1963 disclosed that the direction and control of SCEF and its publication, *The Southern Patriot,* were in the hands of persons who, at various times, had been identified by witnesses under oath as communists. Among such persons were James A. Dombrowski, Executive Director of SCEF; Aubrey Williams, President Emeritus; Carl Braden, Field Organizer, and formerly Field Secretary of SCEF and Editor of *The Southern Patriot;* Ann Braden, Editor of *The Southern Patriot,* and formerly Field Secretary; and William Howard Melish, Eastern Representative of SCEF; and Benjamin E. Smith, Treasurer of SCEF, who was also a national [fol. 94] board member of the National Lawyers Guild, an identified communist-front organization.[15]

16. During the course of the Joint Committee investigation, Mr. Rogers requested the Internal Security Subcommittee of the United States Senate to furnish him with such information as that Subcommittee could properly give relating to SCEF. This request was made by Mr. Rogers of Mr. J. G. Sourwine, counsel of the Senate Subcommittee, on or about July 17, 1963. In response to the request, Mr. Sourwine furnished Mr. Rogers certain rele-

[13] Exhibit 1, p. 2; Exhibit 2, p. 3.

[14] Exhibit 1, p. 2; Exhibit 2, p. 3.

[15] Exhibit 2, p. 3.

vant information from the public records of the Subcommittee bearing upon the activities of SCEF.[16]

17. At that time, Mr. Rogers advised Mr. Sourwine that at some future date the Joint Committee of the Louisiana Legislature might subpoena the records of SCEF, and if this were done, any material uncovered relating to the responsibilities of the Senate Internal Security Subcommittee would be brought to the attention of Mr. Sourwine.[17]

18. At a later date, some time about the middle of September, 1963, Mr. Rogers telephoned Mr. Sourwine to inquire regarding whether he and Mr. Ben Mandel, Research Director of the Senate Committee, could possibly come to Louisiana to help evaluate the material contained in the records of SCEF in the event the Joint Committee of the Louisiana Legislature subpoenaed such records.[18]

19. Mr. Sourwine discussed the inquiry made by Mr. Rogers with Senator Eastland who advised Mr. Sourwine [fol. 95] that his judgment would have to be based upon what was found in the records; that if they should appear to be within the scope of the investigative authority of the Senate Committee, then he and Mr. Mandel might go to Louisiana to look at them. Senator Eastland emphasized to Mr. Sourwine that the Senate Committee had no interest in any debates or activities in which SCEF might have engaged with respect to civil rights or racial matters; that the Committee was interested only in material relating to communist or communist-front activities, especially communist infiltration of mass organizations and the financing of communist fronts.[19]

20. The investigative inquiry carried out by the Joint Committee staff included, among other things, an examina-

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[16] Exhibit 2, p. 3; Exhibit 7, p. 3.

[17] Exhibit 2, p. 3; Exhibit 7, p. 3.

[18] Exhibit 2, pp. 3 and 4; Exhibit 7, p. 3.

[19] Exhibit 7, pp. 3 and 4.

tion of the files of the Louisiana State Police authorities and other Louisiana police agencies relating to the activities and programs of SCEF.[20]

21. In September, 1963, after the Joint Committee investigation had been substantially carried forward, Colonel Alexander and Mr. Rogers informed the Joint Committee of the facts known to them relating to SCEF uncovered by the staff investigation up to that point. Mr. Rogers expressed to the Joint Committee his opinion that the operations and activities of SCEF were in violation of the Louisiana criminal statutes relating to subversive activities.[21]

22. The Joint Committee concurred in this opinion and instructed Mr. Rogers and Colonel Alexander to take the [fol. 96] SCEF matter up with the Louisiana State Police authorities.[22]

23. Pursuant to the directions of the Joint Committee, Mr. Rogers contacted Colonel Thomas D. Burbank, Superintendent, Louisiana State Police, on or about September 20, 1963. The facts relating to SCEF known to the Joint Committee were presented to Colonel Burbank with the request that he have the State Police obtain and execute search warrants for the offices of SCEF and the residential premises occupied by James A. Dombrowski and certain other officers of SCEF.[23]

24. Colonel Burbank agreed to take action and designated Major Russell R. Willie to be the officer in charge of the matter. Major Willie is a Louisiana State Police Officer whose primary duty at that time was and still is, Supervisor of the Bureau of Identification of the State Police.

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[20] Exhibit 2, p. 4.

[21] Exhibit 2, p. 4; Exhibit 1, p. 2.

[22] Exhibit 1, p. 2; Exhibit 2, p. 4.

[23] Exhibit 2, p. 4; Exhibit 3, pp. 1 and 2.

Among the functions performed by his Bureau are the maintenance of fingerprint records, the receipt and classification of all material dealing with known and suspected subversive organizations as well as individuals known to belong to or associate with said organizations. In addition, pursuant to the provisions of Louisiana State law, all communists in the State of Louisiana and all individuals there who are knowingly members of a communist-front organization as defined in the Louisiana statutes, are required to register with the Department of Public Safety, which is under Major Willie's immediate supervision.[24]

[fol. 97] 25. During his conversation with Colonel Burbank, Mr. Rogers offered to assist the Louisiana State Police in obtaining warrants and his offer was accepted.[25]

26. On October 2, 1963, Major Willie and Mr. Rogers appeared before the Honorable Thomas M. Brahney, Jr., Judge, Criminal District Court, Parish of Orleans where Major Willie swore to applications for search warrants for the offices of SCEF and the residences of James A. Dombrowski, Benjamin E. Smith and Bruce C. Waltzer, all of whom were active in the control of SCEF. At the same time, Major Willie and Mr. Rogers, together, swore to applications for arrest warrants for the three named individuals.[26]

27. Being satisfied that probable cause existed, Judge Brahney signed and issued the aforementioned warrants.[27]

28. The warrants were executed on October 4, 1963 by Louisiana State Police and New Orleans Police, all of whom were under the direction and supervision of Major Willie. The materials described in the search warrants

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[24] Exhibit 2, p. 4; Exhibit 3, p. 2; Exhibit 4, pp. 1 and 2.

[25] Exhibit 2, p. 4; Exhibit 4, p. 2.

[26] Exhibit 2, p. 4; Exhibit 4, p. 2.

[27] Exhibit 2, p. 4; Exhibit 4, p. 2.

were seized and the three individuals named in the arrest warrants, one of whom was James A. Dombrowski, were arrested. Execution of the warrants was accomplished pursuant to the orders set forth in the warrants.[28]

29. After the warrants had been executed, Mr. Rogers promptly made a preliminary examination of the material [fol. 98] and records seized by the Louisiana State Police and New Orleans Police.[29]

30. After his examination, Rogers communicated with Representative Pfister, Chairman of the Joint Committee of the Louisiana Legislature, and in response to Rogers' request, Mr. Pfister went to the New Orleans Police Academy, New Orleans, Louisiana, where he met and talked with Rogers.[30]

31. Rogers informed Pfister of the seizure by the police authorities of the books, records and documents of SCEF and of the nature of some of the documents. Representative Pfister, as Chairman of the Joint Committee of the Louisiana Legislature, thereupon authorized Rogers to serve a Joint Committee subpoena upon the appropriate police authority to require the production before the Joint Committee of all the books, records and documents seized from SCEF.[31]

32. Pursuant to the authority given to him by Chairman Pfister, Rogers served a subpoena duces tecum upon Major Willie of the Louisiana State Police, requiring the forthwith production before the Joint Committee of all of the material seized from SCEF.[32]

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[28] Exhibit 2, p. 4; Exhibit 3, p. 2; Exhibit 4, pp. 2 and 3.

[29] Exhibit 2, p. 5.

[30] Exhibit 1, pp. 2 and 3.

[31] Exhibit 1, pp. 2 and 3.

[32] Exhibit 2, p. 5; Exhibit 4, p. 3.

33. Thereupon, Major Willie, in response to the subpoena, transported the seized material to Baton Rouge, Louisiana where it was retained by the State Police as custodians for the Joint Committee.[33]

[fol. 99] 34. That evening, to wit—October 4, 1963, at about 10:30 P. M., Mr. Rogers telephoned Mr. Sourwine at his home in the metropolitan area of the District of Columbia and informed Sourwine that the SCEF material then under subpoena to the Joint Committee would be of great interest to the Internal Security Subcommittee. Rogers urged that Mr. Sourwine and Mr. Mandel come to Baton Rouge, Louisiana for the purposes of assisting in the evaluation of the seized material as soon as possible. Mr. Sourwine advised Mr. Rogers that he and Mr. Mandel would try to be in Baton Rouge the following day, October 5, 1963.[34]

35. On the following morning, Mr. Mandel and Mr. Sourwine left the District of Columbia area and flew to New Orleans, Louisiana and then drove to Baton Rouge, Louisiana where they met Mr. Rogers.[35]

36. Rogers and Colonel Alexander informed Sourwine of the nature of the documents which had been secured from SCEF and the content of certain particular documents whereupon Mr. Sourwine concluded that the records of SCEF in possession of the Joint Committee included a substantial quantity of material which would be of interest to the Internal Security Subcommittee of the United States Senate in pursuance of its investigative functions within the limits of the directive which had been given him by Senator Eastland.[36]

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[33] Exhibit 4, p. 3; Exhibit 2, p. 5; Exhibit 3, p. 3.

[34] Exhibit 2, p. 5; Exhibit 7, p. 4.

[35] Exhibit 2, p. 5; Exhibit 7, p. 4.

[36] Exhibit 7, p. 4.

37. Mr. Sourwine thereupon telephoned Senator Eastland, reported his conclusion to the Senator and recommended that all the material obtained by the Joint Com-
[fol. 100] mittee be subpoenaed from that committee by the Senate Internal Security Subcommittee. Senator Eastland authorized Mr. Sourwine to issue subpoenas for the material and thereafter, on the same day, October 5, 1963, Sourwine served subpoenas duces tecum upon Chairman Pfister, Mr. Rogers and Colonel Alexander, all of the Joint Committee, calling for the production of all the material seized from SCEF.[37]

38. Upon service of the subpoena duces tecum of the Senate Internal Security Subcommittee on October 5, 1963, Mr. Sourwine took possession, on behalf of the Subcommittee, of all the SCEF material then in the hands of the Joint Committee of the Louisiana Legislature.[38]

39. Sourwine then arranged with Colonel Thomas D. Burbank to hold this material as custodian for the Senate Subcommittee.[39]

40. Pending transportation of the SCEF material to Washington, D. C., access to the material was allowed to the Joint Committee.[40]

41. Subsequently, two staff members of the Internal Security Subcommittee brought the material to the Subcommittee's office in Washington, D. C. where, pursuant to the resolution adopted by the Subcommittee on Internal Security of the United States Senate on November 14, 1963,

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[37] Exhibit 7, pp. 4 and 5; Exhibit 6, p. 2; Exhibit 4, pp. 3 and 4; Exhibit 3, p. 3; Exhibit 2, p. 5; Exhibit 1, p. 3.

[38] Exhibit 7, p. 5.

[39] Exhibit 2, p. 5; Exhibit 3, p. 3; Exhibit 7, p. 5.

[40] Exhibit 1, p. 3; Exhibit 2, p. 5.

a copy of which resolution is attached to Senator East-
[fol. 101] land's affidavit, a process of evaluating the material was undertaken.[41]

42. On November 8, 1963, the Joint Committee of the Louisiana Legislature held hearings involving SCEF at which time copies of many of the documents seized from SCEF were introduced into evidence. Upon the basis of the evidence produced, the Joint Committee resolved as a legislative finding that SCEF was a communist front and a subversive organization aiding and abetting the communist conspiracy.[42]

43. Neither Senator James O. Eastland nor Mr. J. G. Sourwine had anything whatsoever to do with the acquisition of the SCEF material by the Joint Committee of the Louisiana Legislature or with the preparation, issuance or execution of the arrest and search warrants whereunder the Louisiana authorities obtained the material of SCEF which was later subpoenaed by the Senate Internal Security Subcommittee.[43]

44. Otherwise than stated in this Statement of Material Facts and the exhibits hereto, neither Senator Eastland nor Mr. Sourwine had anything to do with the activities of the Louisiana authorities, be they legislative or executive, insofar as such activities related to James A. Dombrowski or SCEF, or had any knowledge of such activities.[44]

[fol. 102] 45. At all times pertinent hereto, Senator James O. Eastland and Mr. J. G. Sourwine acted in their

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[41] Exhibit 7, p. 5; Exhibit 6, p. 1 and exhibit thereto.

[42] Exhibit 1, p. 3; Exhibit 2, pp. 5 and 6.

[43] Exhibit 7, pp. 6 and 7; Exhibit 6, p. 2; Exhibit 4, p. 4; Exhibit 3, p. 4; Exhibit 2, p. 6; Exhibit 1, p. 3.

[44] See all exhibits.

official capacities as officers of the United States Government.[45]

David C. Acheson, United States Attorney, Joseph M. Hannon, Assistant United States Attorney.

Roger Robb, of Counsel.

IN UNITED STATES DISTRICT COURT

EXCERPTS FROM DEPOSITION OF WALTER E. DILLON, JR.

Q. Now would you give us your full name, Mr. Dillon, for the record?

A. Walter E. Dillon, Junior.

Q. And your address, please, sir?

A. 1625 I Street, Northwest, Washington 6, D. C.

Q. And you are a lawyer, a member of the Bar of the District?

A. Yes.

Q. You are of counsel for the plaintiffs in this case?

A. Yes.

Q. And are you the same Mr. Walter E. Dillon, Jr., who signed and swore to the complaint in this case?

A. Yes.

Q. Your affidavit reads as follows:

District of Columbia, ss: Walter E. Dillon, Jr., being duly sworn, says that he has read the foregoing complaint by him subscribed, that he knows the contents thereof, and that the matters and things therein stated he verily believes to be true.

[fol. 103] Subscribed and sworn to before me this 31st day of October, 1963.

And a signature which is—which I cannot read, and Notary Public.

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[45] Deposition of J. G. Sourwine, p. 77 and Exhibits 6 and 7.

That was the affirmation to which you subscribed?

A. Yes.

Q. Now, did you mean by that, Mr. Dillon, that you had no personal knowledge of the matters and things which are stated in the complaint?

A. I meant what it says.

Q. Well, do you or did you have any personal knowledge of the matters and things stated in the complaint?

Mr. Kinoy: I think, Mr. Robb, I am going to object to that question.

I fail to see the total relevancy of the interrogation.

Mr. Dillon, the record shows, is one of the attorneys of record in this matter. He verified this pleading pursuant to Rule 6 of the Rules of Civil Procedure of the District of Columbia, perfectly proper verification. It is obvious that any information whatsoever with respect to the four corners of this complaint, the issue involved here, come to Mr. Dillon as an attorney in this matter, and it would appear to me to be totally improper and in violation of the relationship between attorney and counsel to interrogate him at this point as to any of the facts whatsoever which come to his knowledge as an attorney in this case.

I think that any information which you would attempt to receive pursuant to this question would be not admissible and would be very improper.

Mr. Robb: This is a deposition for the purpose of discovery, Mr. Kinoy.

I'm asking Mr. Dillon whether or not he based this affidavit upon information he had received and whether it [fol. 104] was made as of his personal knowledge.

Mr. Kinoy: Well, I have made my objection very clear and it's up to Mr. Dillon who is an attorney to make his own decision as to whether he should answer the question.

The Witness: I'll answer the question.

Let me answer it this way. The information contained in that complaint came to me from three sources, actually four sources; primarily through the law offices of Kunstler, Kunstler and Kinoy, of which Mr. Kinoy here is a member.

I received a call from William Kunstler, an attorney known by me and with whom I have worked closely for many years on other cases, and he related to me many of the facts contained in the complaint.

Mr. Kinoy, I believe—I believe it was a conference call or both of them were on the phone in the offices of Kunstler, Kunstler and Kinoy.

By Mr. Robb:

Q. That's in New York, Mr. Dillon?

A. Pardon?

Q. That's in New York? I say it's in New York?

A. That's in New York City.

And I also received two affidavits, one which is part of the record in the case, one from Mr. Dombrowski and one from Mr. Brener.

And on the basis of that I verified—I stated an opinion that I believed the facts to be true.

Q. And those were the three sources?

A. Four sources.

Q. Four sources. Four?

A. William Kunstler, Kunstler and Kinoy—

Q. I get it. There were no others, is that correct?

A. Mr. Brener and Mr. Dombrowski.

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[fol. 104a]

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 18435, 18544

JAMES A. DOMBROWSKI, et al., Appellants,

v.

COLONEL THOMAS D. BURBANK, et al., Appellees.

APPENDIX FOR APPELLEES

[fol. 104b]

IN UNITED STATES DISTRICT COURT

DOCKET ENTRIES

1963

October 31.....Complaint filed.

October 31.....Motion of plaintiff for preliminary injunction filed. Affidavits (2).

October 31.....Motion for temporary restraining Order denied.

November 27.....Summons and copies of complaint and points and authorities in support of motion for preliminary injunction to United States Attorney and Attorney General. D.A. served 11/29/63.

December 6.....Opposition of Defendants Eastland and Sourwine to Motion for Preliminary Injunction: Affidavits (2) Exhibit "a".

December 14.....Notice by plaintiffs to take deposition of Defendant Sourwine.

December 16.....Proposed withdrawal of Motion for Preliminary Injunction.

December 18.....Order denying plaintiff's Motion for Preliminary Injunction; dismissing so much of complaint which seeks permanent injunctive relief.

December 26.....Notice of Appeal by plaintiff from Order 12/18/63.

1964

January 9.....Deposition of Julian G. Sourwine filed.

January 28.....Motion of Defendants Eastland and Sourwine to Dismiss or for Summary Judgment Exhibit (7); Statement; Points and Authorities.

February 10.....Points and Authorities of Plaintiffs in opposition to motion of defendants Eastland and Sourwine to Dismiss or in the Alternative for a Summary Judgment; Affidavits (2).

March 5.....Affidavit of Arthur Kinoy; exhibit.

March 10.....Reply of Defendants Eastland and Sourwine to plaintiffs' answer to defendants' motion to dismiss or in the alternative for summary judgment.

March 26.....Order granting summary judgment for defendants Eastland and Sourwine.

April 3.....Notice of Appeal by plaintiffs from Order 3/26/64.

[fol. 104c]

IN UNITED STATES DISTRICT COURT

Minute Entry, April 20, 1964. Ainsworth, J.

No. 13967, Civil Action, Division D

JAMES A. DOMBROWSKI, et al.,

versus

COLONEL THOMAS D. BURBANK, et al.

This matter came on for hearing on a former day on motions of defendants, Thomas D. Burbank and Russell R. Willie, to dismiss. The court, having heard the argument of counsel and having considered the briefs and affidavits in support thereof, is now ready to rule.

It Is Ordered that motion of Thomas D. Burbank be, and the same is hereby, *granted.*

It Is Further Ordered that motion of Russell R. Willie be, and the same is hereby, *denied.*

Reasons

An examination of the affidavits filed herein by mover and respondents indicates that there is a sharp dispute between the parties and a genuine issue as to material facts in connection with the activities of the defendant, Major Willie. Trial on the merits is therefore necessary to resolve this dispute and a case is not ripe for summary judgment where a dispute of this kind exists. The affidavits make this especially true with regard to the manner and method of the execution by this defendant of the search warrants and warrants of arrest. Rule 56, Fed. R. Civ. P. See *National Screen Service Corp.* v. *Poster Exchange, Inc.*, 5 Cir., 1962, 305 F. 2d 647.

[fol. 104d] But the same is not true as to the defendant, Burbank, who, though Superintendent of State Police and therefore the highest officer in that department, nevertheless had no contact with the investigation of the activities of Southern Conference Educational Fund, Inc., and according to his affidavit, was not aware of any contemplated action against the Fund until informed by Mr. Rogers, counsel for the Legislative Committee. The Superintendent then required that Mr. Rogers advise Governor Davis of the proposed operations by the State Police and insisted that Mayor Schiro of New Orleans be informed of the contemplated action and his concurrence had. Beyond instructing Major Willie to cooperate with the Joint Legislative Committee's legal counsel and staff, Superintendent Burbank had no further connection with the complained of activities of the police. According to his affidavit, he was not informed of the contents of the applications for search warrants and in no way participated personally in the activities and did not know that they had been issued until the day after their issuance; he took no part personally in any of the activities in connection with the execution of

the warrants. It is true that under the direction of Mr. J. G. Sourwine, counsel for the United States Senate Subcommittee, he caused the material seized by the police to be transported to the Chancery Clerk of Woodville, Mississippi. However, this action is not an issue in this suit, and according to the Burbank affidavit, it was done at the direction of Senator Eastland's committee. The affidavit is in no way controverted by plaintiff and stands undisputed except that plaintiff's counsel in his brief maintains that it is "unthinkable that the conduct of the raids was not with the approval of Colonel Burbank." However, the Burbank affidavit is undisputed and we can see no justification for requiring him to continue as a defendant with the facts showing that he had nothing to do with nor was he aware of the alleged tortious acts.

[fol. 105]

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,435

No. 18,544

JAMES A. DOMBROWSKI, et al., Appellants,

v.

COLONEL THOMAS D. BURBANK, et al., Appellees.

Appeals from the United States District Court for the District of Columbia

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Mr. William M. Kunstler and *Mr. Milton E. Brener*, of the bar of the Supreme Court of Louisiana, *pro hac vice*, by special leave of court, with whom *Mr. Walter E. Dillon, Jr.*, was on the brief, for appellants.

Mr. Roger Robb and *Mr. Joseph M. Hannon,* Assistant United States Attorney, with whom *Mr. David C. Acheson,* United States Attorney at the time the brief was filed, *Messrs. Frank Q. Nebeker* and *Alan Kay,* Assistant United States Attorneys, were on the brief, for appellees Eastland and Sourwine.

Before WASHINGTON, *Senior Circuit Judge,* and BURGER and MCGOWAN, *Circuit Judges.*

[fol. 106] OPINION—February 4, 1966

Per Curiam: The appellants in this case are a Louisiana civil rights organization and its executive director. Their complaint in the District Court sought injunctive relief and damages under 42 U.S.C. §§ 1983 and 1985. The first of these appeals, No. 18,435, is from an order dismissing the claim for injunctive relief. The second, No. 18,544, is from the grant of appellees'[1] motion for summary judgment on the claim for damages.

The complaint alleged in substance that various Louisiana officials, in league with appellees, illegally searched the offices of appellants and seized documents and records.[2] These papers, while in the possession of the Louisiana officials, were subjected to a subpoena issued in the name of the United States Senate Internal Security Subcommittee. Compliance with this subpoena resulted in the transfer of the seized papers to the custody of the Senate

[1] Although the complaint named a number of defendants, most of these appear to be residents of Louisiana upon whom service of process was not effected. Appellees are the only two defendants who were served; and they are, respectively, the Chairman and the Chief Counsel of the United States Senate Internal Security Subcommittee.

[2] A detailed description of this action is contained in *Dombrowski* v. *Pfister,* 380 U.S. 479 (1965). The Supreme Court in that case, decided while the instant appeals were under submission, invalidated the Louisiana statute under which the Louisiana officials purported to act, and directed that the relief to be afforded by the District Court in Louisiana should include "ordering immediate return of all papers and documents seized."

Subcommittee which, in plenary session, made provision for their handling by the resolution set forth in the margin.[3] Appellants, asserting that the subpoena was deficient in [fol. 107] authority from the Subcommittee, seek damages, as well as an injunction requiring appellees to return their records and to refrain from using them.

No. 18,435

Appellants' complaint alleged that the seized materials [fol. 108] were in the possession of appellees. However,

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[3] The full entry in the Subcommittee's minutes is as follows:

November 14, 1963

Upon the conclusions of the testimony of the second of two witnesses heard in executive session, the Subcommittee considered and discussed the handling of material subpoenaed from the Joint Legislative Committee on Un-American Activities of the State of Louisiana.

Present: Senators Eastland, Dodd, Hruska, Dirksen, and Scott.

After discussion, and on motion of Senator Dirksen, it was ORDERED that the Chairman be authorized to appoint a Task Force consisting of Senators Eastland, Johnston, Dodd, Hruska and Scott to evaluate the subpoenaed material progressively with respect to its value to the Subcommittee's investigation and to make determination from time to time respecting particular papers, documents, or other material to be inserted verbatim in the record of the Subcommittee; that all of the material not clearly irrelevant to the Subcommittee's investigation of Communist activity generally, of Communist front activity, of Communist infiltration of organizations and groups, and/or the source of funds for Communist or Communist front activities be ordered into the Committee's hearing record by reference subject to the later determination of the Task Force respecting particular items which should be entered into the record verbatim; and that all of the original records obtained under the subpoena be photostated for the permanent records of the Subcommittee and, when so photostated, be returned promptly to the possession of the Joint Legislative Committee on Un-American Activities of the State of Louisiana.

James O. Eastland Chairman

I consent and agree to the foregoing procedure.

John F. McClellan
Olin D. Johnston
Roman L. Hruska

the affidavits submitted in opposition to appellants' motion for a preliminary injunction revealed that the Senate Subcommittee had incorporated the documents in its hearing record and made express provision for their examination and disposition by the collective act of the Subcommittee. See note 3 *supra*.

Since the seized materials must thus be regarded as in the possession of the Senate Subcommittee,[4] a judicial command addressed solely to appellees—one member of the Subcommittee and one of its staff—cannot be assured of effect. The test, set forth by the Supreme Court in *Williams* v. *Fanning*, 332 U.S. 490, 494 (1947), of the indispensability of a superior to a suit for injunctive relief against a subordinate is whether "the decree which is entered will effectively grant the relief desired by expending itself on the subordinate official who is before the court." *Cf. Hynes* v. *Grimes Packing Co.*, 337 U.S. 86 (1949). Of course, there is only partly present in this case a relationship between a superior and a subordinate official as there was in *Williams;* nevertheless, the problem of requiring a subordinate official to undertake acts capable of [fol. 109] accomplishment only by his superior, which seems central to the purpose of the *Williams* test, also characterizes the difficulties implicit in requiring either of

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[4] Appellants contend that the trial court, in dismissing the prayer for injunctive relief, should have limited its consideration to the allegations of the complaint. Reliance is placed upon *Mast, Foos & Co.* v. *Stover Mfg. Co.*, 177 U.S. 485 (1900), for the proposition that all of the allegations of the complaint must be regarded as true on a motion to dismiss a bill in equity on its face. But even in *Mast, Foos & Co.*, the Court regarded consideration of affidavits as appropriate. 177 U.S. at 495. See also Rule 12, FED. R. CIV. P.; MOORE, FEDERAL PRACTICE ¶ 12.09 (2d ed. 1964). What the Court disapproved was dismissal when a question of fact was involved. On this record, in light of the affidavit setting out the Subcommittee resolution, the dismissal does not involve the resolution of any question of fact which may fairly be regarded as disputed.

the appellees to return documents held by the full Senate Subcommittee.[5]

The dismissal of appellants' request for injunctive relief to prevent appellees from using the seized records also flows from the undisputed fact that the materials are in the custody of the Subcommittee. Since the documents are now held by the Subcommittee, they are accessible to the appellees only by virtue of their official positions with that body. We cannot prohibit, nor are we asked to prohibit, appellees' use of the documents in the course of their official business for the Subcommittee; and neither do appellants seek any restraint upon the Subcommittee itself. See *Hearst* v. *Black,* 66 U.S.App.D.C. 313, 87 F.2d 68 (1936), where this court refused to enjoin a congressional committee from using information it had obtained by illegal means. There, considerations resting upon a proper allocation of powers and responsibilities among the coordinate branches of the federal system impelled this court not to exercise its equity powers.[6] In any event, however, the relief requested here is directed solely at appellees. Disclosure of the documents in the course of the Subcommit- [fol. 110] tee's official action would not be prevented by the decree prayed for against appellees; and all other members of the Subcommittee would still have unfettered use of the documents. "A court of equity may refuse to give any relief when it is apparent that that which it can give

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[5] See also *Blackmar* v. *Guerre,* 342 U.S. 512 (1952). That was a suit for reinstatement by a discharged government employee. Because the Civil Service Commissioners were not parties to the suit, and the only defendant before the court could not grant the requested relief without their approval, the Court held that dismissal of the suit was proper.

[6] See also *Jordan* v. *Hutcheson,* 323 F.2d 597 (4th Cir. 1963); *Pauling* v. *Eastland,* 109 U.S.App.D.C. 342, 288 F.2d 126, *cert. denied,* 364 U.S. 900 (1960); *Mins* v. *McCarthy,* 93 U.S.App.D.C. 220, 209 F.2d 307 (1953). See generally *Developments in the Law-Remedies Against the United States and Its Officials,* 70 HARV. L. REV. 827 (1957).

will not be effective or of no benefit to the plaintiff." *Virginia Ry.* v. *System Federation No. 40,* 300 U.S. 515, 550 (1937).

No. 18,544

Appellees contend that the grant of their motion for summary judgment was proper because (1) appellants failed to put forward a serious claim that appellees were parties to a knowing concert of action with the state officials, and (2) in any event, the doctrine of legislative immunity insulates appellees from suit. Were only the former involved, we might have considerable difficulty in concluding that there were no disputed issues of fact requiring exploration and resolution by means of a trial. But we need not pursue that inquiry since we think the record before the District Court contained unchallenged facts of a nature and scope sufficient to give appellees an immunity against answerability in damages for actions taken in the course of their legislative activities.[7]

The issue, in the large, is whether the actions taken with respect to appellants' records were within the scope of appellees' duties for the Senate Subcommittee. Citing our decision in *Shelton* v. *United States,* 117 U.S.App.D.C. 155, 327 F.2d 601 (1963), appellants argue that the sub- [fol. 111] poenas were invalid because they were issued and executed without the prior authorization of the Subcommittee, as distinct from its Chairman. *Shelton,* however, held only that a person compelled to testify before a Senate Subcommittee by an invalid subpoena could not be convicted of contempt for failing to respond to the Subcommittee's questions. No necessity existed there for consider-

[7] It is settled by *Tenney* v. *Brandhove,* 341 U.S. 367 (1951), that such immunity provides a defense to actions brought for damages under the Civil Rights Act. See also Comment, 40 NOTRE DAME LAW. 70 (1965); Note, 68 HARV. L. REV. 1229 (1955). For general discussions of the Civil Rights Act, see Comment, 49 CALIF. L. REV. 145 (1961), Note, 66 HARV. L. REV. 1285; Comment, 74 YALE L. J. 1462 (1965).

ing the dangers of inhibiting the legislative process by the threat of personal liability to those engaged in it. These are at the core of the public policies reflected in the immunity doctrine.[8]

The Internal Security Subcommittee is required by Senate Resolution to investigate "the extent, nature and effect of subversive activities in the United States . . . ." S.Res. 62, 88th Cong. There is no question that the Senate may legitimately conduct such investigations. As has been said, "The power of Congress to conduct investigations is inherent in the legislative process. That power is broad." *Watkins* v. *United States,* 354 U.S. 178, 187 (1957); see also *Tenney* v. *Brandhove,* 341 U.S. 367, 377-78 (1951). Appellants' own affidavits establish that, for more than a decade, the Subcommittee has evinced an active interest in appellants. As the Subcommittee's Chairman and Chief Counsel, respectively, appellees have immediate responsibilities in the Subcommittee's operations. It is true that the records held by the Louisiana Committee were subpoenaed without prior authorization from the Subcommittee, although the Chairman expressly approved in advance the action proposed to be taken. But this action was shortly brought by appellants to the attention of the Subcommittee as a whole, which discussed the matter of [fol. 112] the subpoenaed papers. After such consideration the Subcommittee, by formal resolution, incorporated the papers in its hearing record, and provided for their ultimate disposition.

Whether this apparently approving action by the full Subcommittee would serve as a *nunc pro tunc* ratification and consequent validation of the subpoena for all purposes, we need not decide. We do regard it as serving to keep appellees' acts in pursuing the Subcommittee's long-

[8] That different considerations are involved when the personal liability of the legislators is involved is illustrated by the facts in *Yellin* v. *United States,* 374 U.S. 109 (1963), which was relied upon in *Shelton.*

standing interest in appellants within the mainstream of legislative effort to a degree adequate to protect against liability in damages for issuing and executing the subpoena. Appellees acted in an area in which the Subcommittee was competent to function. Had appellees received Subcommittee authorization before issuing the subpoena, the official nature of their actions would be evident. Acting first and receiving authorization later does not, under the facts of this case, put their actions beyond the pale of official legislative activity, at least for purposes of the immunity doctrine.[9]

Nor does *Wheeldin* v. *Wheeler,* 373 U.S. 647 (1963), [fol. 113] compel a different result. The plaintiff there sought damages from an investigator for the House Un-American Activities Committee for the allegedly malicious act of serving a subpoena which had been approved by no one, either before or after its issuance. In the Supreme Court the Solicitor General conceded that the complaint on its face showed the defendant to be acting wholly outside the scope of his official duties; and this concession prompted the Court, in the course of otherwise holding that no federal cause of action was made out by the complaint, to note that the immunity doctrine had no relevance. Here, unlike *Wheeldin,* the record before us shows without dispute not only that the subpoena was expressly authorized in the first instance by the Chairman of the legislative

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[9] What appellants essentially contend is that appellees, by acting without prior authorization, acted with a malicious purpose, *i.e.,* to further a conspiracy to deprive appellants of their civil rights. *Tenney* v. *Brandhove,* however, precludes inquiry into appellees' motives to determine the legitimacy of their conduct:

> The claim of an unworthy purpose does not destroy the privilege. . . . The privilege would be of little value if they [legislators] could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives. The holding of this Court in *Fletcher* v. *Peck,* . . . that it was not consonant with our scheme of government to inquire into the motives of legislators, has remained unquestioned. 341 U.S. at 377.

committee, but also that the full committee ratified the action taken when the matter was promptly brought to its attention. Even if it be assumed that there remained a legal hiatus in the title of the subpoenaing authority, immunity from suit is not thereby destroyed. As was said by the dissenting judge in *Wheeldin*: "The question of authority is, of course, distinct from that of immunity from civil suit. Even an unauthorized act may be within the scope of the immunity, so long as it is within the 'outer perimeter' of the officer's 'line of duty.'" [10] 373 U.S. at 656 n.4. This is, of course, "a matter of defense," but summary [fol. 114] judgment may rest upon such a defense where, as here, its existence is established by facts which are undisputed.

Finally, appellants contend that because they charge appellees to have conspired with various officials under the color of *state* law, appellees can claim no immunity because of their positions with the Senate Subcommittee. It is argued that appellee's positions with that body must be regarded as incidental and irrelevant to the present suit; and that appellees are to be viewed as in the position of any other citizen. This, however, ignores that the conduct

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[10] Judge Learned Hand once put the point in these terms:

> "[T]o submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties. Again and again the public interest calls for action which may turn out to be founded on a mistake, in the face of which an official may later find himself hard put to satisfy a jury of his good faith. . . . [I]t has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation." *Gregoire* v. *Biddle*, 177 F.2d 579, 581 (2d Cir. 1949), *cert. denied*, 339 U.S. 949 (1950).

See also *Barr* v. *Mateo*, 360 U.S. 564 (1959); *Cooper* v. *O'Connor*, 69 U.S.App.D.C. 100, 99 F.2d 135, *cert. denied*, 305 U.S. 642 (1938); *Brownfield* v. *Landon*, 113 U.S.App.D.C. 248, 307 F.2d 389, *cert. denied*, 371 U.S. 924 (1962); *Bershad* v. *Wood*, 290 F.2d 714 (9th Cir. 1961).

of which appellants complain (appellees' activities pursuant to the subpoena) could not have been undertaken had appellees had no official legislative positions and responsibilities.[11]

The judgments of the District Court are

Affirmed.

[fol. 115] Washington, *Senior Circuit Judge,* did not participate in this decision.

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[11] Although it has been suggested that the protection of the legislative immunity doctrine does not extend to appellee Sourwine, cf. *Kilbourn* v. *Thompson,* 103 U.S. 168 (1880), what was said in *Barr* v. *Matteo* about the immunity of executive officials seems persuasive here. "The privilege is not a badge or emolument of exalted office, but an expression of a policy designed to aid in the effective functioning of government. The complexities and magnitude of governmental activity have become so great that there must of necessity be a delegation and redelegation of authority as to many functions . . . ." 360 U.S. at 572-73. See also, *Cooper* v. *O'Connor, supra; Bershad* v. *Wood, supra.*

[fol. 116]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 18,435 and 18,544

JAMES A. DOMBROWSKI, et al., Appellants,

v.

COLONEL THOMAS D. BURBANK, et al., Appellees.

Appeals from the United States District Court
for the District of Columbia

Before: Washington,* Senior Circuit Judge, and Burger and McGowan, Circuit Judges.

JUDGMENT—February 4, 1966

These cases came on to be heard on the records on appeals from the United States District Court for the District of Columbia, and were argued by counsel.

On Consideration Whereof, it is ordered and adjudged by this court that the judgments of the District Court on appeal in these cases are affirmed.

Per Curiam.

Dated: February 4, 1966

[fol. 118] Clerk's Certificate to foregoing transcript (omitted in printing).

[File endorsement omitted]

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* Senior Circuit Judge Washington did not participate in the decision of this case.

[fol. 119]

SUPREME COURT OF THE UNITED STATES

No. 118—October Term, 1966

JAMES A. DOMBROWSKI, et al., Petitioners,

v.

JAMES EASTLAND, etc., et al.

ORDER ALLOWING CERTIORARI—October 10, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black took no part in the consideration or decision of this petition.